

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---------------------------------|
| NATIONAL GRANGE MUTUAL | : | |
| INSURANCE CO., | : | |
| Plaintiff | : | |
| | : | Civil Action No. 01-0628 |
| | : | |
| v. | : | |
| | : | |
| SHARP EQUIPMENT CO. OF READING and | : | |
| KOREY BLANCK, | : | |
| Defendants | : | |

| | | |
|---|---|---------------------------------|
| SHARP EQUIPMENT CO. OF READING and | : | |
| KOREY BLANCK, | : | |
| Plaintiffs | : | |
| | : | Civil Action No. 01-1184 |
| | : | |
| | : | |
| v. | : | |

| | | |
|-------------------------------|---|--|
| NATIONAL GRANGE MUTUAL | : | |
| INSURANCE CO., | : | |
| Defendant | : | |

Van Antwerpen, J.

March 1, 2002

MEMORANDUM AND ORDER

I. Introduction

We have referred discovery issues in these cases to a magistrate judge. Before the Court are written objections to Magistrate Judge Arnold C. Rapoport’s Report and Recommendation of January 24, 2002, recommending that we should deny Sharp Equipment Co. of Reading’s (“Sharp Equipment”) and Korey Blanck’s cross-motion for sanctions and grant National Grange Mutual Insurance Company’s (“National Grange”) motion for sanctions, resulting in the

dismissal of the Sharp Equipment v. National Grange (No. 01-1184) case and the counterclaims alleging breach of contract and bad faith, if any, in the National Grange v. Sharp Equipment (No. 01-0628) case. Sharp Equipment and Korey Blanck, the president and sole shareholder of Sharp Equipment, filed objections on February 2, 2002.

For the reasons stated below, after a hearing and presentation of oral argument on February 14, 2002 and conducting a complete de novo review, the Magistrate Judge's Report and Recommendation will be Approved and Adopted. We find there have been repeated, prejudicial, and wilful delays in document discovery, answering interrogatories, and Mr. Blanck's depositions. As sanctions for this, the case of Sharp Equipment v. National Grange (No. 01-1184) will be dismissed with prejudice and the all counterclaims in the case National Grange v. Sharp Equipment (No. 01-0628) alleging breach of contract or bad faith, if any, will be dismissed with prejudice.

II. Procedural History

National Grange filed a declaratory judgment action against Sharp Equipment and Mr. Blanck, Sharp Equipment's president and sole shareholder, on February 7, 2001, seeking a declaration that Sharp Equipment and Mr. Blanck failed to comply with the terms of an insurance policy by not cooperating in the adjustments of its loss claims and by not providing requested documentation and not sitting for an examination under oath. On March 13, 2001, National Grange removed to this Court a two-count Complaint (No. 01-1184) alleging breach of contract and bad faith filed on our about February 16, 2001 in the Court of Common Pleas of Berks County, Pennsylvania by Sharp Equipment and Mr. Blanck. These cases were consolidated on June 5, 2001 under the action captioned National Grange v. Sharp Equipment and Korey Blanck,

No. 01-628.¹

A. Discovery Between National Grange and Sharp Equipment

On March 26, 2001, we issued an order referring all discovery problems to Magistrate Judge Arnold C. Rapoport. On April 3, 2001, National Grange served its Rule 26 Initial Disclosures on Sharp Equipment and Mr. Blanck. On April 10, 2001, National Grange served its first set of Interrogatories and Requests for Production of Documents on Sharp Equipment. On April 18, 2001 and May 9, 2001, counsel for National Grange wrote to Sharp Equipment's counsel regarding non-receipt of the disclosures. National Grange then filed a May 21, 2001 Motion to Compel production of responses. A May 25, 2001 letter from Sharp Equipment's counsel explained that the delay in sending these responses was due to the need to obtain a report and related documents from Sharp Equipment's accountant. On May 30, 2001, Sharp Equipment provided responses to the Requests for Admissions and some documents, but no formal responses were provided for the Interrogatories or the Requests for Production. Sharp Equipment agreed to produce the remaining information on May 31, 2001. National Grange therefore withdrew its Motion to Compel and cancelled the scheduled teleconference with the

¹ The factual background of this case arose out of three claims of loss submitted by Sharp Equipment to its general business insurer, National Grange.

On or about December 10, 1999, in the process of demolishing a second story structure at Sharp Equipment's Reading, Pennsylvania facility, rain invaded an uncovered structure, causing damage to the building and Sharp Equipment's inventory.

On August 24, 2000, Sharp Equipment submitted a claim to National Grange for an alleged theft at Sharp Equipment.

Less than one month later, Sharp Equipment reported a third loss to National Grange for a bathtub overflow of a third floor tenant in the building owned by Sharp Equipment.

While both parties allege a breach of the terms of the insurance policy and a bad-faith failure to cooperate in the assessment of these three losses, we have not factored in any pre-litigation conduct in our evaluation of the cross-motions for sanctions presently before the Court.

Court. On June 1, 2001, Sharp Equipment served its Initial Disclosures on National Grange.

Cooperation was not forthcoming from Sharp Equipment, and accordingly National Grange filed another Motion to Compel on June 4, 2001, seeking responses to the original Interrogatories and Requests for Production of Documents. On June 6, 2001, Sharp Equipment's attorney provided the excuse that his office had received two sets of Interrogatories (one set for Sharp Equipment and one set for Korey Blanck) and, under the mistaken belief that they were duplicates, did not send the Interrogatories on behalf of Sharp Equipment. Counsel further claimed that Interrogatories had been forwarded to Sharp Equipment, but Mr. Blanck was on vacation. He also indicated that the responses had been received in his office, were being typed, and would be forwarded to counsel for National Grange.

On June 12, 2001, a teleconference was held with Magistrate Judge Rapoport regarding the pending Motion to Compel. Magistrate Judge Rapoport ordered Sharp Equipment to respond to the Interrogatories and Requests for Production on or before June 20, 2001. On June 21, 2001, Sharp Equipment's attorney again wrote to National Grange's attorney, stating that he was in possession of five boxes of materials which would be forwarded shortly after review and copying.² National Grange's attorney wrote two letters, on June 26 and July 7, 2001 regarding

² Counsel for Sharp Equipment stated that the office manager was out on maternity leave and that she was solely responsible for the files. At oral argument before us on February 14, 2002, counsel for Sharp Equipment and Mr. Blanck stated that the office manager was out sick. Counsel for National Grange asserted that this excuse of the office manager being sick had never been mentioned before.

Whether this statement about the office manager's pregnancy, maternity, or illness is truthful is irrelevant. Mr. Blanck has maintained that Sharp Equipment has had no employees since at least 1992 and that this office manager was an independent contractor who only worked part time. In light of these assertions, we see no reason why Sharp Equipment could not at least bring in another independent contractor to help with discovery compliance.

the status of these boxed documents and requesting further information on when these materials would be forwarded. Neither Sharp Equipment nor its attorney responded to the letters, and on July 12, 2001, National Grange filed a Motion for Sanctions against Sharp Equipment for its failure to comply with the Magistrate Judge Rapoport's June 12 Order. In response, Sharp Equipment's counsel claimed that he brought the requested information to a deposition on July 10, 2001 but that counsel for National Grange never arrived at the deposition because of car trouble. He also received the Motion for Sanctions on July 12, 2001 and immediately advised National Grange's attorney that he was forced to send the documents via United Parcel Service.

Another teleconference was held on July 23, 2001 with Magistrate Judge Rapoport regarding National Grange's Motion for Sanctions. Magistrate Judge Rapoport then ordered Sharp Equipment to produce all documents by July 25, 2001. On July 25, 2001 Sharp Equipment produced some documents but had still not properly complied with the July 23, 2001 Order. Accordingly, on August 9, 2001, Magistrate Judge Rapoport entered an Order granting National Grange's July 12, 2001 Motion for Sanctions and awarding National Grange attorney's fees in the amount of \$520.00.

On September 10, 2001, counsel for National Grange wrote yet again to Sharp Equipment's counsel outlining all the deficiencies in the prior document productions. Some of the deficiencies included failing to provide bank statements, tax forms, disbursement letters, and invoices. Again, Sharp Equipment failed to even answer the letter, let alone produce the missing documents. Furthermore, Sharp Equipment still had not made the sanction payment in accordance with Magistrate Judge Rapoport's Order of August 9, 2001. Accordingly, National Grange's counsel again wrote to Sharp Equipment's counsel on September 22, 2001, regarding

the missing documents and the status of the sanction payment per the Court's Order of August 9, 2001. On September 26, 2001, Sharp Equipment, finally answering the September 10 correspondence, provided more documents, but even this response was still incomplete

On October 16, 2001, National Grange's counsel again wrote to Sharp Equipment's counsel outlining the numerous insufficiencies in the documents. On November 26, 2001, Magistrate Judge Rapoport held another hearing to deal with this issue and ordered that (1) National Grange supply a list of the missing documents to Sharp Equipment on or before November 28, 2001, (2) Sharp Equipment respond on or before December 5, 2001, and (3) if Sharp Equipment failed to respond, sanctions would be imposed in the amount of \$500 per day, continuing through the period of non-compliance.³ National Grange submitted its list to Sharp Equipment, and Sharp Equipment supplied some documents it determined were responsive to the requests, but also answered that it did not have many of the requested documents.

B. Discovery Issues Between National Grange and Mr. Blanck

While the discovery between National Grange and Sharp Equipment entailed great delays, motions to compel, and court-imposed sanctions, the tale of discovery in this case does not stop there. In addition to the long history of discovery between National Grange and Sharp Equipment, there is also discovery between National Grange and Mr. Corey Blanck.

1. Interrogatories and Requests for Production

On April 23, 2001, National Grange served Interrogatories on Mr. Blanck. On May 29, 2001, Mr. Blanck submitted unsigned responses to the Interrogatories propounded on him. On

³ On December 4, 2001, Mr. Blanck sent impermissible, *ex parte* correspondence to Magistrate Judge Rapoport. It was forwarded, unread, to counsel for Sharp Equipment that same day.

September 7, 2001, National Grange served Requests for Production of Documents on Mr. Blanck. Mr. Blanck did not respond and on October 19, 2001, National Grange filed a Motion to Compel answers to those Requests. On October 19, National Grange also received Mr. Blanck's responses, in the form of objections on the basis that the Requests were burdensome, irrelevant and harassing, and that Mr. Blanck was not a party to this case. Because Mr. Blanck did not object to the Requests within 30 days of September 7, when they were served upon him, Mr. Blanck had waived his ability to object pursuant to Fed. R. Civ. P. 33(b). Furthermore, Mr. Blanck was estopped from arguing that he was not a party to this case since he answered the Complaint and provided responses to Interrogatories. National Grange requested that Magistrate Judge Rapoport enter an order granting the letter Motion to Compel and ordering Mr. Blanck to respond on or before October 24, 2001, without objection. Counsel for Mr. Blanck sought a Protective Order, claiming that much of the document requests were irrelevant. In an October 22, 2001 teleconference, Magistrate Judge Rapoport denied the request of a protective order and Ordered Mr. Blanck to respond to the Requests for Production of Documents without objection on or before October 29, 2001.

2. Mr. Blanck's Depositions

a. October 22, 2001

On October 22, 2001, Mr. Blanck was deposed as the Fed. R. Civ. P. 30(b)(6) deponent of Sharp Equipment.⁴ He was asked several questions regarding material issues which he either refused to answer, would not answer completely, or his counsel advised him not to answer. For example, counsel for National Grange asked Mr. Blanck if he ever tendered a proof of loss for

⁴ He is the only employee of Sharp Equipment, its president, and sole shareholder

Sharp Equipment's loss of business claim. In response, Mr. Blanck stated "I need to speak to my counsel." Subsequently, Sharp Equipment's counsel objected and informed Mr. Blanck that there was a question on the table. Mr. Blanck responded "I don't care." Blanck Dep., 10/22/01 at 99-101.

Mr. Blanck also testified that, in his opinion, National Grange committed bad faith by not performing in accordance with the terms of its insurance policy. Id. at 127. Mr. Blanck stated that National Grange acted in bad faith by breaching the terms of the policy. Counsel then asked which terms were breached. Mr. Blanck responded that he would need to see the policy. Id. at 131. Counsel for National Grange handed Mr. Blanck a copy of the policy and asked him to point out which terms were breached. Mr. Blanck responded that he was not comfortable because the lighting was poor and he was sitting in a "1950's chair." Id. Counsel for National Grange said he could take all the time he wanted to read the document in the deposition room at the Berks County Bar Association, but Mr. Blanck refused. Id. at 133. The deposition was adjourned when the parties could not resolve the dispute.

On October 26, 2001, National Grange filed a letter Motion for Sanctions or in the Alternative, a Motion to Compel, against Sharp Equipment and Mr. Blanck. Magistrate Judge Rapoport held a hearing on November 26, 2001, and at its conclusion, Ordered that any requested relief be filed, in motion form, by November 29, 2001. By Order dated December 3, 2001, Magistrate Judge Rapoport partially granted National Grange's motion to compel and Ordered Mr. Blanck to completely respond to deposition questions regarding bad faith.

Mr. Blanck's deposition resumed on December 9, 10, and 14, 2001. While finally agreeing to answer National Grange's questions regarding bad faith, Mr. Blanck continued to

provide evasive responses. His answers consisted largely of reading, verbatim, entire portions of the insurance policy and claiming that National Grange's failure to pay his claims or properly investigate his loss constituted bad faith. At the December 14, 2001 deposition, Mr. Blanck walked out at approximately 5:30 p.m., refusing to answer any further questions. Counsel for Mr. Blanck and Sharp Equipment stated that he was under the perception that the deposition was only scheduled until 5:00 p.m. and that Mr. Blanck had other business appointments. Counsel for National Grange asked if they would consent to extend the discovery period past the December 15, 2001 deadline, and counsel for Mr. Blanck and Sharp Equipment refused.

On December 26, 2001, National Grange filed a Supplemental Motion for Sanction, seeking dismissal of all of Korey Blanck's and Sharp Equipment's counter-claims alleging bad faith and breach of contract, if any, in the case National Grange v. Sharp Equipment Co. (No. 01-0628) and the dismissal of Sharp Equipment Co. v. National Grange (No. 01-1184) in its entirety as sanctions for Mr. Blanck's conduct during the December 9, 10, and 14 depositions and his refusal to answer questions regarding bad faith allegations as per Magistrate Judge Rapoport's Order of December 3, 2001. In addition, National Grange's Supplemental Motion for Sanctions alleged that Mr. Blanck provided false and misleading testimony in his October 22, 2001 deposition in that (1) he testified on October 22 that his personal tax returns were in order (p. 43), but admitted on December 9 that he had not filed a personal tax return since 1984 and (2) he testified untruthfully that he could not remember specific instances where he testified under oath, but on December 9, it came to light that he had filed a lawsuit alleging bad faith against Liberty Mutual Insurance Co. 10/22/01 at 10-13, 12/09/01 at 14-16.

Sharp Equipment and Mr. Blanck filed a cross-motion for sanctions on December 7 2001,

stating that there is personal animus against Mr. Blanck and that counsel for National Grange deliberately tried to annoy, embarrass and oppress Mr. Blanck. In support of this motion, Sharp Equipment and Mr. Blanck claim that throughout the October 22, 2001 deposition, opposing counsel laughed at his response to questions and was uncooperative with his request to review the insurance policy in a more comfortable environment.

On January 24, 2002, Magistrate Judge Rapoport issued his Report and Recommendation resolving the cross-motion for sanctions. He denied Sharp Equipment's and Korey Blanck's cross-motion for sanction. Furthermore, Magistrate Judge Rapoport recommended granting National Grange's Supplemental Motion for Sanctions, dismissing all counterclaims alleging bad faith and breach of contract, if any, in the National Grange v. Sharp Equipment Co. (No. 01-0628) case and dismissing the Sharp Equipment Co. v. National Grange (No. 01-1184) case in its entirety.

We held oral argument on Sharp Equipment's and Mr. Blanck's objections to the Report and Recommendation on February 14, 2002. For the reasons stated below, due to the outrageous conduct of Mr. Korey Blanck at his depositions and the refusal of Sharp Equipment and Mr. Blanck to comply with the December 3, 2001 Order, the Report and Recommendation of the Magistrate Judge must be approved and adopted in its entirety.

III. Standard of Review

Pursuant to 28 U.S.C. § 636(b)(1)(B), a magistrate judge may issue proposed findings, of fact and recommendations on case-dispositive motions⁵ such as a motion for involuntary

⁵ Although discovery is usually a pretrial matter under 28 U.S.C. § 636(b)(1)(A), we believe the Magistrate Judge acted properly in proceeding under 28 U.S.C. § 636(b)(1)(B) because his sanctions have the effect of dismissing one of the cases before us.

dismissal. After a timely objection, “the district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate’s judge’s disposition to which specific written objection has been made. . .” Fed. R. Civ. P. 72(b). The district judge need conduct a new hearing only in his discretion or where required by law. Local Rule 72.1.

IV. Discussion⁶

A. Review of Factual Findings

After reviewing the record, we find that all recommended factual findings by Magistrate Judge Rapoport should be adopted in their entirety. In addition, we have reviewed ten videotapes of Mr. Blanck’s depositions on December 9, 10, and 14, 2001.⁷ These tapes proved to be quite helpful in evaluating the issues at hand and enable us to make the additional finding that Mr. Blanck was deliberately evasive and combative throughout the entire three days, particularly in answering the questions regarding his claims that National Grange acted in bad faith. We found the last forty-five minutes of the December 14, 2001 deposition rise to the level of being outrageous. Despite the fact that Magistrate Judge Rapoport specifically ordered Mr. Blanck to fully respond to these questions, Mr. Blanck refused to answer specific questions except by reading entire (and often irrelevant) passages of the insurance contract and making blanket assertions that National Grange did not abide by the terms of the policy. He became combative

⁶ To the extent that our findings of fact may be taken as conclusions of law, they are meant to be so taken. To the extent that our conclusions of law may be taken as findings of fact, they are meant to be so taken.

⁷ We did not view the first two hours of the December 10, 2001 deposition, because this portion was missing from the video record.

when questions were posed to test his ability to read an insurance contract or when counsel for National Grange attempted to gather specific information about particular instances of bad faith. Also, we find that Mr. Blanck's behavior during these bad faith questions was a deliberate attempt to avoid answering questions and to stall and delay the proceedings until the December 15 deadline. While such conduct should never take place in any deposition, the conduct is particularly outrageous in light of a specific order by Magistrate Judge Rapoport to answer the very same question that caused the adjournment of the October 22, 2001 dispute.⁸ Furthermore, just before the December 14 deposition ended, counsel for National Grange voiced specific, important questions that still had to be posed regarding bad faith, including injuries or damage brought about by the bad faith and whether Mr. Blanck or Sharp Equipment was seeking to recover for bad faith actions of people other than National Grange and its employees and agents. 12/14/01 at 367-368.

We further find that counsel for National Grange was never abrasive or abusive to Mr. Blanck and that they kept a calm and polite demeanor throughout, despite his uncooperative and often combative responses. Several times, Mr. Blanck accused counsel of smirking or laughing at him. Though only Mr. Blanck can be seen on the video, counsel for National Grange stated for the record that no one was smirking at him. We have no reason to doubt these statements. Furthermore, given the nature of Mr. Blanck's responses, we find that an occasional smirk or chuckle is certainly excusable.

With regard to Mr. Blanck's personal income taxes, we find that the October 22 testimony that all of his personal income tax returns since 1992 were "in order" was a deliberate

⁸ There is no video record of the October 22, 2001 deposition.

attempt to hide the fact that he has filed no income tax returns since 1984. Because of this conduct National Grange was forced to expend resources trying to obtain these non-existent returns. We are deeply troubled by Mr. Blanck's explanation under oath that his income tax returns were in order because he has had no personal income since 1984. On December 9, Mr. Blanck testified at length about numerous sales of cars and sports memorabilia since 1984 and that he realized significant profits on these sales, thus making his claim that he had no personal income impossible to credit.⁹ Even if Mr. Blanck did somehow honestly believe that he had no obligation to file tax returns for the past 17 years, his testimony that his tax returns were "in order" is still false and anyone answering the questions in good faith would disclose the fact that there were no tax returns at all.

Finally, we make a factual finding that Mr. Blanck's accusation that Darlene Grevelding, an adjuster for National Grange, backdated a letter and stuffed it in the record so as to make it appear that National Grange was prompt in responding to the claim to be completely unsupported by the record. We cannot allow such an unfounded, unsupported accusation of fraudulent conduct to factor into our analysis of the cross-motions for sanctions.

B. Review of Legal Conclusions

We find that the legal analysis in the Report and Recommendations is correct and that Magistrate Judge Rapoport correctly applied the appropriate legal standards as mandated by the

⁹ After reviewing the questions and answers regarding Mr. Blanck's personal income tax returns, we feel that we have a duty to order the clerk to send a copy of this memorandum to the U.S. Attorney. In addition to Mr. Blanck's failure to file any income tax return since 1984, Mr. Blanck claims that Sharp Equipment has had no employees since 1992 (the date of incorporation), but only independent contractors, despite the fact that he has sought recovery under the "Employee Dishonesty" provision of his insurance contract and claimed that he had to fire employees as a result of the flood loss of December 1999.

Rules of Civil Procedure and controlling precedent of the Supreme Court and the Third Circuit.

They are thus approved and adopted and summarized herein.

1. Standard

Rule 37(b)(2) of the Federal Rules of Civil Procedure provides in part that:

If a party. . . fails to obey an order to provide or permit discovery. . . the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following. . .

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Rule 37 should not, however, “be construed to authorize dismissal of [a] complaint because of petitioner’s noncompliance with a pretrial production order when it has been established that failure to comply has been due to inability, and not willfulness, bad faith, or any fault of petitioner.” National Hockey League v. Metro. Hockey Club, 427 U.S. 639, 640 (1976), quoting Societe Internationale v. Rogers, 357 U.S. 197, 202.

The Third Circuit takes the position that dismissal is a “drastic” remedy and that it “should be reserved for those cases where there is a clear record of delay or contumacious conduct by the plaintiff.” Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 866, quoting Donnelly v. Johns-Manville Sales Corp., 677 F.2d 339, 342 (3d Cir. 1982). The Third Circuit has laid out six factors to examine to determine whether a trial court has abused its wide discretion in dismissing a case.

- (1) The extent of the party’s personal responsibility;
- (2) The prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- (3) A history of dilatoriness;

- (4) Whether the conduct of the party or the attorney was willful or in bad faith;
- (5) The effectiveness of sanctions other than dismissal, which entails an analysis of all of alternative sanctions; and
- (6) The meritoriousness of the claim or defense.

Poulis, 747 F.2d at 868. While a trial court does not have to examine all of these factors to warrant a dismissal, Magistrate Judge Rapoport did carefully examine all of these factors, and we also have done so. Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 919 (3d Cir. 1992).

2. The Poulis Factors

a. The Extent of the Party's Personal Responsibility

Magistrate Judge Rapoport examined the proffered excuse behind Sharp Equipment's numerous discovery delays, including the maternity leave of an office worker, counsel mistakenly believing that the two sets of interrogatories were identical, and the need to obtain a report and related documents from its accountant. We agree with Magistrate Judge Rapoport's conclusion that the responsibility for the document production delays lies primarily with Sharp Equipment and Korey Blanck personally. None of these excuses were made until after deadlines had not been met and thus Sharp Equipment and Mr. Blanck should be held responsible for failure to seek an extension of time or to make alternate arrangements. In addition, Mr. Blanck has still not submitted a signed copy of his interrogatories, though his attorney has signed it.¹⁰

One additional and important factor is that all of the evasive, untruthful, delaying, and combative responses to deposition questions were supplied by Mr. Korey Blanck, the president

¹⁰ Answers to interrogatories must be signed by the person making them and only objections are to be signed by the attorney. FRCP 33(b)(2).

and sole shareholder of Sharp Equipment Company. As his outrageous conduct during his depositions is the primary reason for the pending motion for sanctions, we weigh this factor very strongly in favor of dismissing Sharp Equipment's and Mr. Blanck's claims and counter-claims.

b. Prejudice to the Adversary

We agree with Magistrate Judge Rapoport's determination that there has been monetary and temporal prejudice to National Grange by the conduct of Sharp Equipment and Korey Blanck. The discovery process has been delayed over and over again, through absolutely no fault of National Grange. Furthermore, National Grange has had to file five motions to compel and three motions for sanctions, simply to gain routine discovery to which it is clearly entitled. Also, National Grange had to spend resources seeking the non-existent personal tax returns which Mr. Blanck falsely stated were "in order."

However, more important than monetary expense and time delays is that, to date, National Grange is still unable to evaluate the claims against it. Mr. Blanck and Sharp Equipment have accused National Grange of acting in bad faith, a very serious accusation. Yet Mr. Blanck's evasive and combative responses have prevented National Grange from ever learning what these alleged bad faith actions are, how they have harmed either Sharp Equipment or Mr. Blanck, or whether actions of others not associated with National Grange are being grouped in to the accusations of bad faith.

In light of the monetary and temporal delay to National Grange, combined with its inability to evaluate the claims against it, we find that this factor weighs strongly in favor of granting the motion for sanctions and dismissing the claims against National Grange.

c. History of Dilatoriness

We fully adopt Magistrate Judge Rapoport's conclusions that Mr. Blanck's and Sharp Equipment's history of dilatoriness in complying with discovery deadlines and orders weighs in favor of granting the motion for sanctions and dismissing the claims against National Grange. We further note that, even when Sharp Equipment or Mr. Blanck gave excuses for the delays and failure to meet the deadlines, such as the maternity leave of the office manager, these excuses were not even given until well after the deadlines had already passed. This history of dilatoriness goes well beyond routine delays that often arise during the discovery period. Even after Magistrate Judge Rapoport's second Order to Compel on June 12, 2001, Sharp Equipment did not provide the documents. Even more outrageous is the fact that after Magistrate Judge Rapoport granted the first motion for sanctions, there was no production or payment of the sanctions award for two months and the production was still incomplete. Accordingly, we weigh this factor in favor of granting the motion for sanctions.

d. Bad Faith of the Party or Attorney

We find that the failures of counsel for Sharp Equipment and Mr. Blanck throughout the discovery period were due to the conduct of his clients.

After reviewing the record and viewing the videotaped depositions, we find that Mr. Blanck's evasiveness, dishonesty, and combativeness were deliberate and in bad faith and we attribute this conduct to him and the corporation of which he is president and sole shareholder. Accordingly we weigh this factor strongly in favor of granting the motion for sanctions.¹¹

¹¹ We note that even if Mr. Blanck's lengthy responses to the bad faith questions were made in good faith and that he honestly believed he was giving a cooperative answer (a proposition we find to be wholly unsupported by the record), our overall decision in this matter would not change. Under any reading of the record, Mr. Blanck's responses caused extensive delay, and the fact that neither he nor counsel would consent to continuing the December 14

e. Effectiveness of Other Sanctions

We approve and adopt Judge Rapoport's conclusions that no other sanction would be effective. We appointed a Magistrate Judge to oversee the situation but it did not remedy the discovery problems. Sharp Equipment has already paid an award of costs and fees for failure to comply with discovery orders, yet the dilatory conduct continued. Furthermore, after the adjournment of the October 22 deposition, Judge Rapoport specifically ordered Mr. Blanck to respond to questions about bad faith. Mr. Blanck deliberately disobeyed this order by providing evasive, misleading, combative and delaying answers to the questions and by ending the December 14 deposition without agreeing to continue the questioning at a later date. We are fully convinced that another award of monetary relief or an order to compel would do nothing to remedy the situation, given Mr. Blanck's history of flaunting court orders. Accordingly, we weigh this factor in favor of granting the motion for sanctions.

f. The Meritoriousness of the Claim

We approve and adopt Judge Rapoport's conclusion that the record does not support a finding of bad faith or breach of contract on the part of National Grange. In addition, Mr. Blanck was questioned at length about the business practices of Sharp Equipment and whether it is or has been a profitable company. Mr. Blanck testified that the majority of the inventory is acquired with cash and that there are no records of these purchases. Accordingly, we find that it would be

deposition or extending the discovery period would warrant sanctions and dismissal of the case. This is especially true in light of Judge Rapoport's specific order to answer the questions regarding bad faith.

virtually impossible for Sharp Equipment or Mr. Blanck to prove damages.¹²

We make a further finding that even if Sharp Equipment and Mr. Blanck had a provable case of breach of contract and/or bad faith, we would give that little weight in light of the fact that the conduct of Sharp Equipment and Mr. Blanck has made it impossible for National Grange to have a fair opportunity to evaluate the claims against it and defend itself.

g. Balancing

We approve and adopt Magistrate Judge Rapoport's conclusion that the balancing of the Poulis factors leads to a determination that sanctioning Sharp Equipment and Mr. Blanck by dismissing their claims is the only fair and effective remedy for the unacceptable behavior throughout the discovery period. We recognize the extreme nature of this sanction, but Sharp Equipment and Mr. Blanck have brought it upon themselves. A litigant cannot assert claims against another party and simultaneously refuse to provide information to which the other party is entitled. Furthermore, the blatant disregard for numerous court orders cannot be tolerated by this or any court.

3. Cross-Motion for Sanctions

We approve and adopt Magistrate Judge Rapoport's determination that Sharp Equipment's and Korey Blanck's cross-motion for sanctions must be denied. The record shows that National Grange and its counsel have acted fairly and in good faith at all times during the discovery period.

¹² In addition to the lack of factual support for the claims, it must be noted that Mr. Blanck has submitted numerous claims against insurance companies, including the recent claim against Liberty Mutual which was the subject of unsuccessful litigation by Mr. Blanck. In that case, a counter-claim was filed against Mr. Blanck for insurance fraud.

V. Conclusion

Based upon our evaluation of the record, the Report and Recommendation of Magistrate Judge Rapoport must be approved and adopted in its entirety. National Grange's motion for sanctions must be granted, and all counterclaims alleging breach of contract and bad faith, if any, in the case National Grange v. Sharp Equipment Co. (No. 01-0628) must be dismissed and the case Sharp Equipment Co. v. National Grange (No. 01-1184) must be dismissed in its entirety.

An appropriate order follows.¹³

¹³ There is a pending discovery dispute between National Grange and Sharp Equipment's public adjuster, Mike Lazarchick of State Public Adjusting. It is our understanding that, in light of the dismissal of Sharp Equipment's and Korey Blanck's claims, this dispute has become moot.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--|---|---------------------------------|
| NATIONAL GRANGE MUTUAL INSURANCE CO., Plaintiff | : | |
| | : | |
| | : | |
| | : | Civil Action No. 01-0628 |
| | : | |
| v. | : | |
| | : | |
| | : | |
| SHARP EQUIPMENT CO. OF READING and KOREY BLANCK, Defendants | : | |

| | | |
|--|---|---------------------------------|
| SHARP EQUIPMENT CO. OF READING and KOREY BLANCK, Plaintiffs | : | |
| | : | |
| | : | |
| | : | Civil Action No. 01-1184 |
| | : | |
| | : | |
| v. | : | |
| | : | |
| | : | |
| NATIONAL GRANGE MUTUAL INSURANCE CO., Defendant | : | |

ORDER

AND NOW, this 1st day of March, 2002, consistent with the foregoing opinion, it is hereby ORDERED as follows:

- (1) The Report and Recommendation of Magistrate Judge Arnold C. Rapoport, filed January 25, 2002, is **APPROVED** and **ADOPTED**;
- (2) Sharp Equipment Co. of Reading's and Korey Blanck's Objections, filed February 5, 2002, are **DENIED** and **OVERRULED**;
- (3) National Grange Mutual Insurance Co.'s Supplemental Motion for Sanctions, filed December 26, 2001, is **GRANTED**;
- (4) Sharp Equipment Co. of Reading's and Korey Blanck's Cross-Motion for Sanctions, filed December 7, 2001, is **DENIED**;

- (5) All counterclaims alleging breach of contract and bad faith, if any, in the case National Grange Mutual Insurance Co. v. Sharp Equipment Co. of Reading and Korey Blanck (No. 01-0628), are **DISMISSED** with prejudice;
- (6) The case Sharp Equipment Co. of Reading and Korey Blanck v. National Grange Mutual Insurance Co. (No. 01-1184) is **DISMISSED** in its entirety with prejudice, and **CLOSED**; and
- (7) As explained in Footnote 9, the **CLERK OF THE COURT** is **ORDERED** to send a certified copy of the foregoing memorandum to the **UNITED STATES ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF PENNSYLVANIA**.

BY THE COURT:

Franklin S. Van Antwerpen, U.S.D.J.