

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

EUODIAS ADAMS : CIVIL ACTION
: :
: :
v. : :
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: :
THE ATLANTA CASUALTY COMPANY : NO. 98-1901

MEMORANDUM ORDER

Presently before the court is plaintiff's motion for sanctions. Plaintiff asks for entry of a default judgment because of defendant's failure to provide discovery as ordered by the court.

On June 19, 1998, plaintiff moved to compel answers to interrogatories and a response to a request for production of documents. Defendant filed no response to this motion. By order of July 17, 1998, the court granted plaintiff's motion and ordered defendant to respond to plaintiff's outstanding discovery requests within 14 days.

On August 7, 1998, still having received no response to his outstanding discovery requests, plaintiff moved for sanctions. Defendant filed no response to this motion. By order of September 16, 1998, the court denied the motion without prejudice and ordered defendant to provide plaintiff with responses to his outstanding discovery requests by October 1, 1998 or by that date show cause why sanctions should not be imposed. When plaintiff still received no discovery by October 1, 1998, he filed the instant motion for sanctions the following day.

On October 13, 1998, counsel for defendant finally responded. He conceded that defendant was delinquent in responding to plaintiff's discovery requests and had failed to obey court orders to do so. By way of explanation, defendant's counsel stated that on September 11, 1998 the attorney assigned to this action abruptly resigned for personal reasons. Defendant's counsel explained that that attorney's cases were reassigned within the office and the attorney assigned responsibility for this action did not become aware of the court's order until October 2, 1998. Defendant's counsel then immediately contacted plaintiff's counsel to explain the problem and to request further time to respond. Defense counsel represented that discovery responses would be furnished by October 16, 1998. Plaintiff's counsel refused to agree to an extension.

The court initially ordered defendant to respond to plaintiff's outstanding discovery requests on July 17, 1998, nearly two months before the attorney in defense counsel's office originally assigned to this action resigned. Defendant's counsel offers no explanation for the failure to comply with the court's order of July 17, 1998. Defendants, of course, also had an obligation under the Federal Rules of Civil Procedure and this court's Local Rules to provide discovery without any court order. See, e.g., Tarkett, Inc. v. Congoleum Corp., 144 F.R.D. 282, 285 (E.D. Pa. 1992); Crown Cork & Seal Co., Inc. v. Chemed Corp., 101 F.R.D. 105, 106-07 (E.D. Pa. 1984).

Even accepting the representation of defendant's counsel that the failure to comply with the court's orders was the result of inadvertence or negligence and not willfulness, it does not follow that sanctions are inappropriate. See Halas v. Consumer Services, Inc., 16 F.3d 161, 164 (7th Cir. 1994). Nevertheless, a default judgment is a severe sanction which should be imposed as a last resort or in the most egregious cases. If counsel's representation in his opposition to sanctions about furnishing discovery by October 16, 1998 is true, then plaintiff by now has received the discovery responses. It would also have been more reasonable for plaintiff's counsel under the circumstances to have agreed to a final brief extension than to undertake the effort and incur the expense of filing the instant motion.

ACCORDINGLY, this day of October, 1998, upon consideration of plaintiff's Motion for Sanctions for Failure to Comply with a Court Order Directing Discovery (Doc. #13) and defendant's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED** without prejudice to renew if outstanding discovery responses are not provided by October 30, 1998 in which event sanctions will be imposed.

BY THE COURT:

JAY C. WALDMAN, J.