

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



INTERSTATE INDEMNITY COMPANY, )  
)  
Plaintiff, )  
)  
v. )  
)  
DAN BLACK, )  
)  
Defendant. )

1:02CV01069

**ORDER COMPELLING DISCOVERY AND IMPOSING  
SANCTIONS ON INTERSTATE INDEMNITY COMPANY**

This matter came before the Court on (1) the motion of Defendant Dan Black (“Black”) to compel Plaintiff Interstate Indemnity Company (“Interstate”) to adequately respond to requests for production of documents and interrogatories (Pleading No. 17); and (2) the amended motion of Interstate to extend time for discovery and the mediated settlement conference and for leave to supplement its Rule 26(a)(2) disclosures (Pleading No. 25). The motions have been fully briefed and counsel were heard in oral argument on October 20, 2003. For the reasons stated in open court, the Court ordered as follows:

Defendant Black’s motion to compel is **GRANTED IN SUBSTANTIAL PART**. Plaintiff Interstate is **ORDERED** to provide written responses to interrogatories 1, 3, 4, 5, 6 and 7. The Court strikes Interrogatory 2 as improperly vague and unduly burdensome. The Court limits interrogatory 7 to require Plaintiff Interstate to describe any communications between any person associated with Fountain Powerboat and any person or agent associated with Interstate relating to the boat at issue up to the date on which the complaint in this matter was filed. In conjunction with Defendant Black’s motion to compel the production of documents, Plaintiff Interstate shall provide Defendant

Black with a privilege log containing all documents that Interstate is withholding from discovery on grounds of privilege. *See* Fed. R. Civ. P. 26(b)(5). Documents created on or after the date on which the complaint in this matter was filed need not appear in the privilege log. Plaintiff Interstate shall verify its answers to Defendant Black's interrogatories as provided by Rule 33 of the Federal Rules of Civil Procedure and serve the answers by no later than Thursday, November 20, 2003.

**IT IS FURTHER ORDERED** that Plaintiff Interstate be taxed with the costs incurred by Defendant Black in filing his motion to compel and his reply brief, including reasonable attorneys' fees. Plaintiff's action in merely submitting documents in lieu of supplying interrogatory answers was not substantially justified under the circumstances of this case. *See* Fed. R. Civ. P. 37(a)(4). Plaintiff's invocation of Rule 33(d) was unjustified for the reasons fully stated in open court, including the lack of sufficient specification to allow Defendant to locate and identify Plaintiff's "answer." A party must do more in response to interrogatories than simply turn over a volume of documents and declare, in effect, "you find my case." Defendant Black has 30 days from the date of this order to file with the Court an affidavit detailing the costs so incurred. Plaintiff Interstate shall have 10 days following the filing of Defendant Black's affidavit in which to contest the amount or type of costs claimed. The Court's final award of costs to Defendant Black will be deferred until the final judgment in this matter.

Plaintiff Interstate's motion to extend time for discovery and the mediated settlement conference is **GRANTED IN PART**. The Court extends the discovery period until December 1, 2003 to permit the following discovery:

- 1) Plaintiff Interstate may depose Defendant Black.
- 2) Plaintiff Interstate may depose Defendant Black's designated expert, Steve Harrelson, as provided in Rule 26(b)(4) of the Federal Rules of Civil Procedure. Pursuant to that rule, Plaintiff Interstate *shall* pay Mr. Harrelson a reasonable expert fee for appearing and testifying at the deposition.
- 3) Defendant Black may depose Plaintiff Interstate's expert, Carl S. Foxworth. As a sanction against Plaintiff Interstate for its failure to comply fully with this Court's discovery scheduling order and Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, the costs of Mr. Foxworth's deposition, including Mr. Foxworth's fee as an expert, are assessed in full against Plaintiff Interstate.

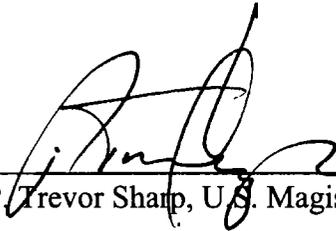
No further discovery will be permitted in this matter.

The deadline for a second mediated settlement conference is extended to January 30, 2004. Plaintiff Interstate shall secure the attendance of both local and out-of-state counsel at this conference. The Court does not tax the costs of the first, unsuccessful mediated settlement conference against either party.

Plaintiff Interstate's motion for leave to supplement its Rule 26(a)(2) disclosures is **GRANTED IN PART**. The Court will allow Plaintiff Interstate to forthwith supplement its Rule 26(a)(2) disclosures with information required by the federal rules regarding its expert, Carl S. Foxworth. The Court will not permit Kenny Ivey to appear as an expert in this action, since Plaintiff Interstate failed to identify him as an expert in this matter. Mr. Foxworth's testimony at trial shall

be limited to the opinions and conclusions expressed in his two-page report already provided to Defendant Black in discovery.

**IT IS SO ORDERED.**



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P. Trevor Sharp, U.S. Magistrate Judge

October 24, 2003