

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-22091-CIV-KMM/AMS

NEW YORK MARINE & GENERAL
INSURANCE CO.,

Plaintiff,

v.

MULTICARGA INT'L. , CORP.,

Defendant.

ORDER DIRECTING DEFENDANT TO FILE
RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION

Presently pending before the Court is Plaintiff's Motion for Sanctions [D.E. 22]. The motion is referred to the undersigned Magistrate Judge [D.E. 24].

On March 2, 2009, the undersigned entered an Order to Show Cause ordering the Defendant to file a Memorandum by the close of business on March 6, 2009, showing cause why the Plaintiff's Motion for Sanctions should not be granted for Defendant's failure to respond to Plaintiff's Request for Production of Documents, and why a judgment as to liability should not be entered against the Defendant by default for failing to respond to Plaintiff's Motion for Sanctions [D.E. 30].

On March 5, 2009, Defendant filed a Response to the Order Show Cause stating that it had filed its Response to Plaintiff's Request for Production of Documents and had furnished "...all responsive documents not previously furnished to Plaintiff's attorney along with said Response." [D.E. 31].

On March 6, 2009, Plaintiff filed a Reply to Defendant's Response to the Order to Show Cause wherein Plaintiff stated that although the Defendant did respond to Plaintiff's Request for Production, that the response was inadequate. Specifically, Plaintiff stated

the following, “From the documents that were telefaxed to Plaintiff’s counsel on March 5, 2009, it is apparent that Defendant has complied with Request Nos. 1, 2, and 3. However, there still has been no compliance with Requests Nos. 4 through 22 and no explanation has been forthcoming.” [D.E. 35].

Thus, although Defendant has referred to a written response to Plaintiff’s Request for Production in its March 5, 2009 filing, Plaintiff’s Reply seemingly indicates that no written response was served on the Plaintiff. As a result, it is unclear to the undersigned whether the Defendant served a written response to Plaintiff’s Request for Production of Documents or whether Defendant merely forwarded certain documents without a written response and without specifying which documents were responsive to which Requests.

Federal Rule of Civil Procedure 34(b)(2) states that a party who receives a request for production of documents, “must respond in writing...” and “[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.” Thus, in responding to a party’s request for production, the responding party must provide a written response that addresses each item or category of documents as opposed to simply forwarding documents to the requesting party without explanation as to which documents are responsive to a particular request. In addition, if a party does not possess documents that are responsive to a particular request, the responding party should specifically state so in the corresponding response.

In this case, since it is unclear whether Defendant complied with Fed. R. Civ. P 34(b)(2) in responding to Plaintiff’s Request for Production of Documents because neither Party submitted Defendant’s written Response to Plaintiff’s Request to the Court, the Defendant is ordered to file its written response to Plaintiff’s Request for Production,

without the accompanying documents, for the undersigned to review.

Accordingly, it is hereby

ORDERED that by the close of business on Tuesday, March 10, 2009, Defendant shall file a Notice of Filing Written Response to Plaintiff's Request for Production of Documents, with the written response but without the responsive documents, as referenced in Defendant's Response to this Court's March 2, 2009, Order to Show Cause. Failure to comply with this Order may result in the imposition of sanctions against the Defendant.

DONE AND SUBMITTED in chambers in Miami, Florida on March 6, 2009.



ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable K. Michael Moore, United States District Judge
All counsel of record via CM/ECF