

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

NAVISTAR, INC.; PURE POWER
TECHNOLOGIES, LLC; and
INTERNATIONAL ENGINE
INTELLECTUAL PROPERTY
COMPANY, LLC,

Plaintiff,

v.

PURE POWER, LLC,

Defendant.

Case No. 4: 12-CV-013-BLW

**MEMORANDUM DECISION
AND ORDER**

The Court has before it a motion for attorney fees filed by plaintiffs, seeking \$9,920 in fees from defendant. The motion was filed and served on December 17, 2012, and there has been no timely response – or any response at all – filed by defendant.

In an earlier filed Order, the Court found that a discovery dispute arose between the parties “because defense counsel failed to communicate with plaintiffs’ counsel, and has either failed to file discovery responses or filed them late.” *See Order (Dkt. No. 28)*. For example, plaintiffs filed their initial disclosures on September 7, 2012, but defendants failed to respond with their own initial disclosures. Two months passed, and despite repeated attempts to contact defense counsel by plaintiffs’ counsel, defense counsel failed

Memorandum Decision & Order - 1

to respond. This, and other discovery failures by the defense, prompted plaintiffs to initiate the Court's protocol for resolving discovery disputes and seek a mediation with the Court before filing any motion to compel. Following that mediation session, the Court issued its Order, set forth above, finding that defense counsel had caused the discovery dispute by failing to communicate and failing to file discovery responses, and authorized plaintiffs to file this motion for attorney fees.

The fees sought by plaintiffs were incurred by them in an attempt to compel defendant to comply with its discovery obligations. The hourly rate and the total hours charged are both reasonable. There is no showing that the discovery failures by the defense counsel were justified or that other circumstances would make an award unjust. Accordingly, pursuant to Fed.R.Civ.P. 37(a)(5), (c) & (d), the Court will grant the motion for attorney fees.

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion for attorney fees (docket no. 30) is GRANTED.

IT IS FURTHER ORDERED, that plaintiffs shall have from defendant the sum of \$9,920 representing an award of attorney fees.



DATED: **March 25, 2013**

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill
Chief U. S. District Judge