

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

| | | |
|---------------------------|---|---------------------------|
| Delach |) | |
| |) | |
| Plaintiff |) | |
| v. |) | Case No. 13 c 7619 |
| |) | |
| General Insurance Company |) | Judge Virginia M. Kendall |
| Defendant |) | |
| |) | |

ORDER

Defendant General Insurance Company’s Motion to Dismiss [Dkt. No. 9] is granted without prejudice. Because Plaintiff Raymond Delach’s Complaint seeks to compel an arbitration process that is currently on-going: discovery is being conducted and the arbitrators have been selected. Plaintiff has therefore failed to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P 12(b)(6). Moreover, aside from filing an appearance, counsel for the Plaintiff has failed to prosecute this case—he did not file a Response to the Motion to Dismiss and failed to appear for the Initial Status Hearing scheduled for January 8, 2014. See *Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039, 1041 (7th Cir. 1999) (finding the plaintiff defaulted for failing to respond to defendant’s motion to dismiss). The Plaintiff may reinstate his claim within 90 days from today if the Defendant reverses course and declines to continue participating in the arbitration.

Date: January 24, 2014

/s/ Virginia M. Kendall

U.S. District Judge