

**UNITED STATES DISTRICT COURT
for the SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION**

JONATHON SHARKEY,)	
)	
Plaintiff,)	
)	
vs.)	CAUSE NO. 1:09-cv-517-JMS-DKL
)	
MEGAN COCHRAN, TERESA)	
LUCCHETTI, MATTHEW PAUL)	
WILLIAMS, and ROSS LUCCHETTI,)	
)	
Defendants.)	

ENTRY FROM TELEPHONIC STATUS CONFERENCE

DECEMBER 14, 2011

HONORABLE DENISE K. LaRUE

**DIRECTION TO THE CLERK OF THE COURT
TO PROVIDE COPY OF FILE AND ENTER APPEARANCE**

This Cause came before the Court for a telephonic status conference on Wednesday, December 14, 2011 before the undersigned Magistrate Judge. Participating telephonically were Jonathon Sharkey, plaintiff; Matthew Paul Williams, defendant; and attorney Kimberly S. Lytle, representing defendants Megan Cochran, Teresa Lucchetti, and Ross Lucchetti.¹ A record of the conference was made by court reporter Cathy Jones. Also attending the conference was Mike Frische, the Court's Supervisory Staff Attorney.

On April 19, 2010, the Court entered defaults against all Defendants based on their

¹ Ms. Lytle filed her appearance on the day before the conference.

failures to answer or otherwise respond to Plaintiff's Complaint [doc. 44].² On July 18, 2011, the Court denied defendant Teresa Lucchetti's request (by letter) for the Court to dismiss the case, thus maintaining the entry of default against her [doc. 51]. The District Judge directed this Magistrate Judge to conduct a conference or other proceeding to ready this Cause for a determination of the relief that Plaintiff is entitled based on the Defendants' defaults.

1. The Court summarized the law governing the further development of this case. An entry of default does not establish liability *per se*; rather, defaulted defendants are deemed to have admitted a complaint's well-pleaded facts respecting liability. Defaulted defendants may still challenge, and the Court has a responsibility to determine, whether the well-pleaded factual allegations state plausible and legally-cognizable claims. A defaulted defendant is not deemed to have admitted a plaintiff's legal theories or merely conclusory assertions. Fed. R. Civ. P. 8(b)(6); *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994); *Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc.*, 722 F.2d 1319, 1323 (7th Cir. 1983); Wright, Miller, & Kane, *Federal Practice and Procedure: Civil*, § 2688, p. 63 (3rd ed. 1998). The standard for determining the legal sufficiency of allegations is contained in rules of procedure, *e.g.*, Fed. R. Civ. P. 8, decisional law, *e.g.*, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), and the statutes or common law creating the particular causes

² The Court's file includes returned executed Waivers of the Service of Summons for each of the defendants, filed on July 21 and 24, 2009 [docs. 17, 18, 19, and 20].

of action.

A defaulted defendant is not deemed to have admitted a plaintiff's factual allegations respecting damages and may fully litigate the issue of damages. Fed. R. Civ. P. 8(b)(6); *In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004); *United States v. Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989).

Finally, regardless of the nature of the asserted claims, neither a plaintiff nor a defaulted defendant has a constitutional, statutory, or rule-based right to a jury trial on the issue of damages. It is within a court's discretion to determine the type of hearing that is appropriate in the circumstances of a particular case. Fed. R. Civ. P. 55(b)(2); *Olcott v. Delaware Flood Co.*, 327 F.3d 1115, (10th Cir.), *cert. denied*, 540 U.S. 1089 (2003); *Matter of Dierschke*, 975 F.2d 181, 185 (5th Cir. 1992) *Adriana International Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir. 1990), *cert. denied*, 498 U.S. 1109 (1991); Wright, Miller, & Kane, *Federal Practice and Procedure: Civil 3d* § 2688, p. 69 (1998); Moore's Federal Practice § 55.32[2][e], p. 55-49 (3rd ed. 2011).

2. The Court granted defendant Matthew Paul Williams' request to be provided with a copy of the Court's file and so directs the Clerk of the Court.

3. On Plaintiff's inquiry, the Court confirmed that all parties are required to serve copies of filings on all other parties. Fed. R. Civ. P. 5(a)(2) excuses service only "on a party who is in default for failing to appear." All Defendants have now appeared, are entitled

to fully participate in the current damages phases of this case, and are entitled to service of all filings. Because defendants Teresa Lucchetti, Megan Cochran, and Ross Lucchetti are now represented by counsel, service should be made only on their counsel. Because defendant Matthew Paul Williams is proceeding *pro se*, service should be made on him personally.

4. All parties confirmed that their service addresses currently on file are accurate and still in effect.

5. The Court outlined the remaining stages in this case: first, the Court will determine the legal sufficiency of Plaintiff's asserted claims; second, the parties will be permitted to undertake damages-related discovery on the surviving claims; third, the parties will undertake the preparations established in this Entry for any hearing on damages that is scheduled; and, fourth, any damages hearing will be held.

6. The Court issues the following scheduling order. *Some of these provisions vary slightly from those described during the conference.*

a. Claim-sufficiency submissions. No later than **January 27, 2012**, the parties shall file their briefs on the legal sufficiency of Plaintiff's allegations and claims. All parties agreed to this deadline. These briefs should be in the nature of briefs submitted on motions under Fed. R. Civ. P. 12(c) (motion for judgment on the pleadings) and 12(b)(6) (motion to dismiss for failure to state a claim upon which relief can be granted) and should provide

the parties' arguments on the issue of whether the Complaint's well-pleaded factual allegations state plausible and legally-cognizable claims. The briefs may not exceed 35 pages in length. There shall not be response or reply briefs. Each party must serve his or her brief on all other parties no later than 3 days after the brief is filed in a manner provided in Fed. R. Civ. P. 5(b).

b. Discovery. Commencing on the date that the Court issues its determination of which claims are legally sufficient and, thus, will proceed, the parties shall have **sixty (60) days** in which to *complete* discovery. "*Complete*" means that discovery requests must be served on the producing parties in sufficient time to receive their responses before the 60-day deadline expires.³ Discovery shall be limited to the subject of damages and shall be limited to interrogatories (Fed. R. Civ. P. 33), requests for production (Rule 34), and requests for admissions (Rule 36). A party desiring to use any other means of discovery must first file a motion for leave of court and show, at a minimum, substantial need and inability to obtain the desired information by other means. The Court reminds the parties that they must comply with its local rules regarding discovery practice. Their attention is particularly directed to the terms of S.D. Ind. L.R. 26.1 (form of discovery documents), 26.2 (filing of discovery in court), 36.1 (limits on requests for admissions), and 37.1 (discovery disputes).⁴

³ Each of the permitted means of discovery prescribe a 30-day response time. Fed. R. Civ. P. 33(b)(2), 34(b)(2), and 36(a)(3).

⁴ The local rules are available on the Court's website: <http://www.insd.uscourts.gov/Publications/LocalRules.pdf>.

c. Hearing schedule. The District Judge will determine the type of hearing on damages that is appropriate (*e.g.*, jury trial, bench trial, or written submissions only) and will schedule the date thereof and the date of any Final Pretrial Conference.

d. Trial preparation. If a Final Pretrial Conference is scheduled, the following deadlines shall apply:

(1) Three weeks before the Final Pretrial Conference, each party shall:

- (a)** File and serve on other parties a list of witnesses who are expected to be called to testify at the trial.
- (b)** Number in sequential order all exhibits, including graphs, charts, and the like, that will be used during the trial. File and serve on other parties a list of exhibits, including a description of each exhibit and the identifying designation. Make the original exhibits available for inspection by opposing parties. Stipulations as to the authenticity and admissibility of exhibits are encouraged to the greatest extent possible.

(2) Two weeks before the Final Pretrial Conference, each party shall:

- (a)** File and serve on other parties all stipulations of facts. Stipulations are always encouraged so that, at any hearing, the parties can concentrate on relevant contested facts.
- (b)** If a jury trial is scheduled, file and serve on other parties any trial briefs and motions *in limine*, all proposed jury instructions, *voir dire* questions, and areas of inquiry for *voir dire*. If a bench trial is scheduled, file and serve on other parties proposed findings of fact and conclusions of law.

(3) One week before the Final Pretrial Conference, each party shall:

- (a)** Notify other parties in writing of any objections to the proposed exhibits. If the parties desire a ruling on an objection prior to trial, a motion shall be filed and served on other parties noting the objection and a description and designation of the exhibit, the basis of the objection, and the legal authorities supporting the objection.

- (b) If a jury trial is scheduled, file and serve on other parties objections to any motions *in limine*, proposed jury instructions, and proposed *voir dire* questions submitted by the opposing parties.
- (c) Notify the Court and other parties of requests for separation of witnesses at the trial.

7. The Court hereby schedules a follow-up telephonic pretrial conference for Thursday, March 15, 2012, at 9:00 a.m. (EST). The parties are directed to call (317) 229-3930.

8. The Clerk of Court is directed to enter the appearance of Matthew Paul Williams on the docket.

SO ORDERED.

Date: 12/16/2011



Denise K. LaRue
United States Magistrate Judge
Southern District of Indiana

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