

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**IN RE: STEPHEN HARPER AS OWNER
OF THE M/Y HOLLAND'S ISLAND**

CIVIL ACTION

NUMBER: 15-157-JWD-RLB

ORDER

Before the court is a Motion to Compel Discovery (R. Doc. 27) and *Ex Parte* Motion and Incorporated Memorandum for Expedited Hearing on Motion to Compel (R. Doc. 28) filed by the Petitioner/Third-Party Defendant Stephen Harper and Third-Party Defendant American Reliable Insurance Company (collectively "Movants") on October 23, 2015. These motions were referred to the undersigned on October 26, 2015.

The Movants represent that the deposition of Third-Party Defendant Brenton Sherwood, who is proceeding *pro se*, is scheduled for November 4, 2015. (R. Doc. 28 at 1). In support of their Motion to Compel, the Movants represent that Mr. Sherwood has not provided initial disclosures, which were due on September 1, 2015, and has not provided timely responses to their interrogatories and requests for production. (R. Doc. 27-2 at 2-3). The deadline to complete non-expert discovery in this action is set for February 5, 2016. (R. Doc. 26 at 1).

While expedited consideration of the Motion to Compel would be appropriate based upon the Movant's representations and the approaching discovery deadlines, the court finds it logistically unfeasible to resolve the Motion to Compel prior to the November 4, 2015 deposition. Mr. Sherwood is proceeding without counsel and, as he has not consented in writing to accept service by electronic means, the court must provide him a copy of this Order through mail and provide him an opportunity to respond to the Motion to Compel. Given the timing of the filings, a resolution of the Motion to Compel cannot be reached prior to November 4, 2015.

Furthermore, upon review of the certificate of service accompanying both the instant Motion for Expedited Hearing and the Motion to Compel, the respective filings only certify that those motions were “electronically filed . . . with the Clerk of Court by using the CM/ECF system.” (R. Doc. 28 at 4); (R. Doc. 27 at 2). While this is a proper method of service of a motion on parties who have consented to electronic service, “[p]arties who have not consented to electronic service must be served with a copy of any pleading or other document filed electronically in accordance with the Federal Rules of Civil Procedure, the Local Rules, and the administrative procedures.” Local Rule 7(f)(2). There is no indication in the record that these motions have been served on Mr. Sherwood by a means allowed by Rule 5(b) of the Federal Rules of Civil Procedure.

Based on the foregoing,

IT IS ORDERED that the Movant’s Motion to Compel (R. Doc. 27) and *Ex Parte* Motion and Incorporated Memorandum for Expedited Hearing on Motion to Compel (R. Doc. 28) are **DENIED**. Movants may reassert their motion to compel and seek resolution of such motion on an expedited basis so long as the filing attorney includes an appropriate certificate of service indicating that the motions have been properly served on Mr. Sherwood. The court’s denial of the instant motions in no way alters Mr. Sherwood’s obligation to provide initial disclosures and respond to discovery requests as may be required pursuant to the Federal Rules of Civil Procedure.

Signed in Baton Rouge, Louisiana, on October 28, 2015.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE