

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

CHAMBERS OF
TIMOTHY J. SULLIVAN
UNITED STATES MAGISTRATE JUDGE
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October 3, 2013

REPORT AND RECOMMENDATION

Re: *Berkley Regional Insurance Co. v. James T. Redding, Inc., d/b/a JTR, Inc., et al.*
Case No. ELH-12-2578

Dear Judge Hollander:

This case was referred to me for a report and recommendation on Plaintiff's Motion for Default Judgment (ECF No. 11). For the reasons set forth below, I recommend that (1) Plaintiff's Motion for Default Judgment and Supplemental Motion for Default Judgment be denied without prejudice to renewal and (2) the Court grant leave to Plaintiff to file an Amended Complaint with the specific damages it actually seeks.

In its Complaint, Plaintiff demands damages "of at least \$1,055,390.70." (ECF No. 1 ¶ 37). In its Motion for Default Judgment, however, Plaintiff seeks damages of \$2,825,045.60, nearly \$1.8 million more than the amount demanded in the Complaint. Because Fed. R. Civ. P. 54(c) provides that a "default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings," I requested that the Plaintiff provide the Court with any authority supporting its position that it is entitled to a default judgment with damages so far in excess of what was demanded in the Complaint. (ECF No. 15).

Plaintiff filed a Supplemental Motion for Default Judgment (ECF No. 16) arguing that because Defendants "were on notice that [Plaintiff's] . . . damages were ongoing and continuing in nature," Plaintiff may seek damages in excess of those demanded in the Complaint. (ECF No. 16 at 6). Plaintiff has not submitted any authority supporting its position that damages awarded in a default judgment may exceed the amount demanded in the complaint by more than 150%. In the alternative, Plaintiff requests that "if the Court is not inclined to award damages in excess of \$1,055,390.70," it be permitted to withdraw its Motion for Default Judgment and file and serve an Amended Complaint on Defendants James Redding and Kimberly Redding¹ pursuant to Fed. R. Civ. P. 15(a)(2).

Accordingly, I recommend that Plaintiff's Motion for Default Judgment (ECF No. 11) and Supplemental Motion for Default Judgment (ECF No. 16) be denied without prejudice to renewal. I also recommend that Plaintiff be granted leave of Court to file and serve an Amended Complaint as to Defendants James Redding and Kimberly Redding within a time period

¹ On August 9, 2013, Plaintiff filed a Suggestion of Bankruptcy as to Defendant James T. Redding, Inc. d/b/a JTR, Inc., but noted that the remaining defendants have not filed for bankruptcy. (ECF No. 13).

