

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

H. RICHARD AUSTIN,

Plaintiff,

v.

HANOVER INSURANCE COMPANY *a/k/a*
MASSACHUSETTS BAY INSURANCE
COMPANY,

Defendant.

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No. 4:16CV01491 JAR

MEMORANDUM AND ORDER

This matter is before the Court on the motion (Doc. No. 14) of Defendant Hanover Insurance Company for an award of sanctions. Pro se Plaintiff H. Richard Austin has filed a brief in opposition. For the reasons set forth below, the Court will direct Defendant to supplement the record to demonstrate the motion's compliance with Rule 11 of the Federal Rules.

Rule 11, Fed. R. Civ. P., contains a "safe harbor" provision where a party against whom sanctions is sought must first be given 21 days to withdraw or correct a challenged paper without suffering adverse consequences. Specifically, it requires that a motion for sanctions must be served under Rule 5, and that "it must not be filed or be presented to the court if the challenged paper . . . is withdrawn or appropriately corrected within 21 days after service or within another time the court sets." Rule 11(c)(2), Fed. R. Civ. P.

Here, on review of the motion for sanctions, it is not apparent to the Court that Defendant has complied with the safe harbor provision of Rule 11. Defendant's motion was filed on December 7, 2016, and the certificate of service therein indicates the motion was served on Plaintiff the same day. The motion does not otherwise represent it was served on Plaintiff prior to that date.

Accordingly,

IT IS HEREBY ORDERED that, **no later than February 13, 2017**, Defendant is directed to supplement the record with documentation of the motion's compliance with Rule 11, Fed. R. Civ. P., or otherwise demonstrate its compliance with Rule 11 in filing the instant motion [14] for sanctions.

IT IS FURTHER ORDERED that, **no later than February 13, 2017**, Defendant shall file a verified statement of the attorney's fees and costs it has incurred in responding to this action.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE

Dated this 30th day of January, 2017.