



[Inc.](#), 144 F.3d 418, 421-22 (6th Cir. 1998). Further, a party against whom a motion to compel is enforced may only avoid payment of sanctions by demonstrating that his position is substantially justified. [Rickels v. City of South Bend](#), 33 F.3d 785, 787 (7th Cir. 1994). “[A] party may not avoid sanctions merely by producing the documents after a motion has been filed.” [Illinois Tool Works, Inc. v. Metro Mark Prods., Ltd.](#), 43 F. Supp. 2d 951, 960 (N.D. Ill. 1999). “To allow a party to avoid sanctions by such a contrivance would defeat the purpose of the rules, which is to promote voluntary discovery without the need for motion practice.” [Illinois Tool](#), 43 F. Supp. 2d at 960. Furthermore, “[u]ltimate production of the material in question does not absolve a party where it has failed to produce the material in a timely fashion.” [Id.](#)

Mr. Jungers’ failure to provide discovery required the plaintiffs to file a motion to compel. Mr. Jungers has had a reasonable opportunity to provide justification for the failure to provide the discovery. Mr. Jungers has failed to provide any justification for the failure. Mr. Jungers’ conduct caused unnecessary expense, delay, and court intervention. Accordingly, the court finds the plaintiffs should be granted reasonable expenses for filing the motion to compel. **See** [Fed. R. Civ. P. 37\(a\)\(5\)](#). Upon consideration,

**IT IS ORDERED:**

1. The plaintiffs are awarded reasonable costs and attorney’s fees in bringing the November 14, 2008 motion to compel ([Filing No. 36](#)).
2. Counsel for the parties shall confer on a reasonable amount to be awarded and, if there is agreement, shall file **on or before February 19, 2009**, a stipulation of the costs and fees to be awarded. In the event the parties fail to reach an agreement, the plaintiffs may file **on or before February 20, 2009**, an application for the award of the costs and fees accompanied by an affidavit of such costs and fees, pursuant to [NECivR](#) 54.3 and 54.4. Mr. Jungers shall have **until on or before March 4, 2009**, to respond to the plaintiffs’ application. Thereafter, the issue of costs and sanctions will be deemed submitted and a written order entered.

DATED this 27th day of January, 2009.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge