

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America for the use and)
benefit of Curtis C. Davis d/b/a Davis)
Contracting Company,)
)
Plaintiff,)

ORDER

vs.)

Byrd Brothers Emergency Services, LLC,)
and Travelers Casualty and Surety)
Company of America,)
)
Defendants,)

Travelers Casualty and Surety Company)
of America,)
)
Third-Party Plaintiff,)

Case No. 4:12-cv-153

vs.)

Byrd Brothers, Inc., Claude R. Byrd,)
James K. Byrd, and Donna R. Byrd,)
)
Third-Party Defendants.)

On application by Defendant Travelers Casualty and Surety Company of America ("Travelers"), the Clerk's office filed entry of default on September 29, 2015, against Defendant Byrd Brothers Emergency Services, LLC ("BBES") and Third-Party Defendants Byrd Brothers, Inc., Claude R. Byrd, James K. Byrd, and Donna R. Byrd pursuant to Fed. R. Civ. P. 55(a).

On October 31, 2015, Travelers filed a motion for entry of stay regarding its cross claims against BBES and third-party claims against the third-party defendants pending resolution of a lawsuit captioned Mike Munna, LLC v. Byrd Brothers Emergency Services, et. al., 34th District Court for the Parish of St. Bernard, State of Louisiana, Case No. 14-0645 (hereinafter referred to as the "Louisiana lawsuit").

On November 4, 2014, plaintiff and Travelers filed a motion to dismiss the following claims

and counterclaims with prejudice: Plaintiff's claims against Travelers and BBES; and BBES's counterclaims against plaintiff. Therein, they advised that the parties had participated in a private mediation on August 25, 2014, and that a settlement of these claims was reached. They further advised that, although BBES had not been represented by counsel, BBES's President participated in the mediation by telephone and email and has subsequently confirmed in writing BBES's consent to the agreement.

On November 7, 2014, the court issued order granting the motions to dismiss and to stay, dismissing all pending claims except for Travelers' cross claims against BBES and third-party claims against the third-party defendants, and staying what remains of this action pending resolution of the Louisiana lawsuit.

On November 13, 2015, Travelers filed a motion to lift the stay. Therein, it advised the court of its intention on filing a motion for default judgment in the Louisiana action. However before doing so, it requested that this court lift the stay in this action so it could attempt to effectuate service on third-party defendant Claude R. Byrd.

On November 18, 2015, the court issued an order granting Travelers' motion and lifting the stay. Approximately seven months has since lapsed and there has been no apparent action in this case. Consequently, Travelers is directed to submit a brief report to the court by September 1, 2016, updating it on the Louisiana lawsuit along, its efforts to serve third-party defendant Claude R. Byrd, and how it intends to proceed with the above-entitled action.

IT IS SO ORDERED.

Dated this 5th day of July, 2016.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court