IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

---

RAYMOND BRESETTE, #217468,

Plaintiff,

v.

OFFICER STEVE KNUDSEN, *et al.,*

Defendants.

ORDER

06-C-280-C

---

Back on October 20, 2006, counsel for defendants responded to plaintiff's request for production of insurance policies by stating "Defendants are procuring a certified copy of the insurance policy and will forward the copy to Plaintiff promptly upon receipt." *See* dkt. 23, Exh. A at 2. In reliance on this representation (among others), this court denied plaintiff's motion to compel because it was moot. *See* dkt. 24. But in December 2006, plaintiff complained that he had not yet received these policies. In January, 2007, defendants responded that they were current in all their discovery obligations. *See* dkts. 56-57. Now it appears that defendants' representations to the court were inaccurate: they still have not provided copies of the insurance policies to plaintiff. Their explanation is that they promised plaintiff certified copies of the policies, and they have not yet received certified copies from the insurers. *See* dkt. 60. Defendants aver that they now have sent uncertified copies of the policies to plaintiff. *Id*. Defendants assert that their oversight has not prejudiced plaintiff.

I agree with defendants that plaintiff is not prejudiced by this oversight. Further, at least in a hypertechnical sense, defendants have not broken their promise to plaintiff: they promised him certified copies, which they have yet to receive; therefore, they are not yet in a position to make good on their promise.

All this being so, the *gestalt* of the situation is that defendants did not fulfil their discovery obligation on this point, they did not follow through appropriately, and they misled the court into believing that the problem had been solved when it had not. Obviously all of this was unintentional; defendants had nothing to gain by not disclosing the insurance policies and then claiming otherwise to the court. But this court cannot ignore the ongoing neglect of even an inconsequential discovery obligation. As defendants' attorneys well know, when dealing with an easily agitated opponent, the best policy is to dot all the "i"s and cross all the "t"s. It also would have been tactically prudent to express contrition to the court upon discovering the error. Although not a prerequisite to expiation, a little remorse, even if insincere, often will soothe opposing parties and the court.

So what is the appropriate sanction in this situation? I already have ruled out default judgment, which plaintiff seems to request for all slights, real and imagined. Cost-shifting isn't appropriate because plaintiff is pro se. Striking evidence isn't a good fit given the unintentional and inconsequential nature of the error. A symbolic sanction and a warning will suffice to reproach defendants' attorneys.

Therefore, when providing the certified copies of defendants' insurance policies to plaintiff, lead counsel for defendant must provide a cover letter apologizing to plaintiff for defendants' miscues in responding to this discovery request.

Hereafter, if defendants violate any of their discovery obligations in this case, there shall be a rebuttable presumption that the violation was reckless or intentional and the court shall impose sanctions with sharp teeth as provided by Rule 37(b).

Entered this 22nd day of January, 2007.

BY THE COURT:
/s/
STEPHEN L. CROCKER
Magistrate Judge