

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

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SENTRY INSURANCE A MUTUAL  
COMPANY,

Plaintiff,

v.

B & H HEALTH CARE SERVICES, INC.  
d/b/a Nursing Personnel Homecare,

Defendant.

OPINION AND ORDER

13-cv-386-wmc

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Before the court are two motions by defendant B & H Health Care Services, Inc. In the first submission, defendant filed a brief and affidavit in opposition to plaintiff's request of over \$8,000 in attorney's fees incurred in seeking a default judgment due to defendant's failures to meet statutory and court-imposed deadlines. (Dkt. ##55, 56.) At the time of defendant's filing, the court had already awarded plaintiff \$8,432 in attorney's fees. (Dkt. #54.) As such, the court will treat defendant's submission as a motion for reconsideration. As it did at the time of awarding attorney's fees, the court acknowledges that the requested fees appear high, but it relied -- consistent with Seventh Circuit law -- on plaintiff's representation that "Sentry has paid the invoices for these fees" (Pl.'s Mot. (dkt. #51) 1), in finding them reasonable. (Dkt. #54 at 6-7 (citing *Balcor Real Estate Holdings, Inc. v. Walentas-Phoenix Corp.*, 73 F.3d 150, 153 (7th Cir. 1996)).) Given the sizable award and in an abundance of caution, the court will require plaintiff's counsel to file (1) copies of the actual invoices and (2) proof of payment, the

latter either in the form of a cancelled check or an affidavit from its client, before defendant is required to pay the amount awarded.

The second motion asks for leave, if required, to disclose an expert to testify as to *damages*. (Dkt. #58.) The preliminary pretrial conference report set deadlines for liability experts, but none were set as to damages experts. (Dkt. #7 at ¶ 2.) In light of plaintiff's recent amendment of its complaint increasing the amount of damages sought, defendant represents that it now foresees the need to call an expert witness on damages. In its opinion and order denying plaintiff's motion for default, the court emphasized that defendant was required to comply strictly with all deadlines, and that no extensions will be granted for any reason. (1/31/14 Op. & Order (dkt. #54) 2.) Still, because a damages expert deadline was not set as part of the preliminary pretrial conference order, and because plaintiff's recent amendment does change the damage picture, the court will grant defendant's request to designate a damages expert. To insure that the expert will be limited to testifying about damages, the court will also bifurcate this trial, deciding liability first.

In conjunction with this second motion, defendant also filed an incomplete expert disclosure, identifying the expert and attaching his CV, but not including the report required under Fed. R. Civ. P. 26(a)(2)(B). (Dkt. #57.) Defendant represents that it will provide a report once plaintiff has responded to defendant's discovery requests, which are due on or about February 21, 2014. Accordingly, defendant has until February 28, 2014, to fully comply with the requirements of Fed. R. Civ. P. 26(a)(2). Plaintiff may name a rebuttal damages expert on or before March 28, 2014. To accommodate

discovery of the damages experts, the court will also extend the discovery cut-off generally to April 30, 2014.

ORDER

IT IS ORDERED that:

- 1) defendant B & H Health Care Services, Inc.'s motion for reconsideration of this court's order granting \$8,432 in attorney's fees (dkt. #54) is GRANTED IN PART AND DENIED IN PART. Plaintiff is required to submit the materials identified in the opinion above before defendant is required to pay the award. In all other respects, the motion is denied; and
- 2) Defendant's motion for extension of time to disclose a damages expert (dkt. #58) is GRANTED. Defendant has until February 28, 2014, to disclose a damages expert in full compliance with Fed. R. Civ. P. 26(a)(2). Plaintiff in turn may disclose a damages expert on or before March 28, 2014. The discovery cut-off date is also extended to April 30, 2014.

Entered this 14th day of February, 2014.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge