

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 05-339-JJF
 :
 SIXTEEN THOUSAND DOLLARS AND :
 NO CENTS (\$16,000.00) IN :
 UNITED STATES CURRENCY, :
 :
 Defendants. :

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UNITED STATES ATTORNEY'S OFFICE, Wilmington, Delaware.
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Attorneys for Claimant.

MEMORANDUM OPINION

June 1, 2007
Wilmington, Delaware

Jose J. Farnan
Farnan, District Judge

Pending before the Court is Plaintiff United States' Motion To Strike Claim And Answer Or For Other Sanctions Under FRCP 37 (D.I. 45). For the reasons discussed, the Motion will be granted in part and denied in part.

I. BACKGROUND

The following facts are alleged in the Government's Verified Complaint In Rem (D.I. 1). On December 21, 2004, Detective Don Pope of the Delaware State Police stopped two cars allegedly involved in a road rage incident. Detective Pope asked the two drivers to wait until uniformed officers arrived to handle the situation. When the officers arrived, they arrested Ivan Meickle, the driver of Defendant In Rem Chevrolet Tahoe, for reckless endangering and other traffic offenses. Upon a search of Mr. Meickle's person, the officers discovered \$721.00 and a bag containing marijuana. Upon searching the car, the officers located \$16,000.00 inside the center console and an electronic scale, which Mr. Meickle admitted was used for weighing drugs.

On February 16, 2005, Vincent Charran ("Claimant") filed a claim with the Drug Enforcement Administration ("DEA") for the Chevrolet Tahoe¹ and the \$16,000.00. Claimant contends that on December 21, 2004, he and his fiancée were arguing and the police were called to his house. Claimant, out of fear that the money he had saved and borrowed for a new house would be taken, placed

¹On April 18, 2006, the Court granted Plaintiff's Motion To Dismiss the Defendant In Rem Chevrolet Tahoe. (D.I. 28).

the money in the center console of his Chevrolet Tahoe. Later that evening, after Claimant had already gone to bed, Mr. Meickle asked to borrow Claimant's car and Claimant, half-asleep agreed, not concentrating on the fact that the console still contained the money.

The Government filed its Verified Complaint In Rem (D.I. 1) on May 27, 2005. A Warrant For Arrest In Rem And Summons (D.I. 3) was subsequently issued. Claimant filed his Answer To Plaintiff's Verified Complaint In Rem (D.I. 9) on August 15, 2005, and his Verified Claim on September 8, 2005 (D.I. 13). On August 17, 2005, the Government filed its first Motion To Strike The Answer (D.I. 10) for the failure of Claimant to timely file a verified claim. Claimant responded by filing a Motion To Dismiss (D.I. 15). On March 8, 2006, the Court denied both Motions and the parties commenced discovery.

On November 20, 2006, the parties stipulated to an extension of discovery until December 15, 2006. On November 28, 2006, the Government attempted to take the depositions of Claimant, Mr. Meickle, and Yomilla Singh, Claimant's girlfriend, in New York at the offices of Claimant's New York counsel. None of the deponents appeared for the deposition although Claimant's New York counsel was present. The parties stipulated to another extension of time for discovery and the Government attempted to depose the Claimant again, in Delaware, on January 15, 2007. Again, none of the deponents appeared for the deposition although

Claimant's Delaware counsel was present. On January 17, 2007, a mediation before the Magistrate Judge was cancelled because Claimant failed to appear.

II. PARTIES' CONTENTIONS

By its Motion, the Government contends that the Court should strike Claimant's Answer and enter judgment in its favor because such a sanction is warranted under Fed. R. Civ. P. 37(d)(1) for Claimant's failure to appear at the noticed depositions and his dilatory pattern of litigation in this case. In the alternative, the Government contends that the Court should extend the time for discovery for thirty days, order Claimant to appear in Delaware for a deposition, and award the Government fees and costs associated with the cancelled depositions. In response, Claimant contends that the Government's Motion should be denied because his failure to attend the depositions and mediation is justifiable. Claimant contends that the Court should extend discovery by thirty days, with no further extensions, to allow Claimant one last opportunity to be deposed in Delaware.

III. DISCUSSION

Rule 37(d) allows a court to dismiss an action where a party has refused to appear for his deposition. Fed. R. Civ. P. 37(d). Here, Claimant failed to appear for two scheduled depositions. Thus, the Court may consider dismissal of Plaintiff's case as a sanction. Under Third Circuit case law, "dismissal is a drastic

sanction and should be reserved for those cases where there is a clear record of delay or contumacious conduct by the plaintiff."

Donnelly v. Johns-Manville Sales Corp., 677 F.2d 339, 342 (3d Cir. 1982). In determining whether a punitive dismissal is warranted, a court must consider six factors:

- (1) the extent of the party's personal responsibility;
- (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;
- (3) a history of dilatoriness;
- (4) whether the conduct of the party or the attorney was willful or in bad faith;
- (5) the effectiveness of sanctions other than dismissal...; and
- (6) the meritoriousness of the claim or defense.

Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984).

The Court concludes that, in the circumstances, dismissal is not warranted based on the six Poulis factors. Specifically weighing against dismissal are Claimant's lack of bad faith, the effectiveness of alternative sanctions, and the arguable merit of Claimant's defense based on his Verified Claim. Claimant has not shown a lack of willingness to cooperate with the Government. Rather, Claimant cites the recent loss of his child and subsequent struggle with alcoholism as an explanation for his failure to appear at the depositions and mediation. As a remedy, Claimant offers that he will travel to Delaware to appear for a deposition. The Court concludes that Claimant's failure to appear is sufficiently justifiable so as to avoid the sanction of

dismissal. Accordingly, the Court will deny the Motion to the extent it requests dismissal of the action.

However, the Court finds that the Government has been prejudiced by the time and money spent to prepare for three cancelled proceedings. Additionally, the Court finds that further delay of discovery unduly prejudices the Government's ability to resolve the claims, and therefore, discovery should not continue indefinitely. Thus, the Court concludes that the Government's request for alternative relief is reasonable in the circumstances. Accordingly, the Court will grant the Government's Motion to the extent it requests other sanctions.

IV. CONCLUSION

For the reasons discussed, the Court will grant the Government's Motion to the extent it requests other sanctions and deny the Motion to the extent it requests dismissal of the action. Specifically, the Court will extend the discovery period for a period of thirty days during which Claimant must appear for a deposition in Delaware. Additionally, the Court will award the Government its reasonable fees and costs associated with the two depositions for which Claimant failed to appear.

An appropriate Order will be entered.

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ORDER

At Wilmington, the 7 day of June 2007, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Plaintiff United States' Motion To Strike Claim And Answer Or For Other Sanctions Under FRCP 37 (D.I. 45) is DENIED to the extent it requests the Court strike Claimant's Answer and enter judgment in its favor, and GRANTED to the extent it requests other sanctions;
2. The time for discovery is extended for **thirty (30) days from the date of this Order**; during which Claimant shall attend a deposition in Delaware;

3. The Government is awarded reasonable fees and costs associated with the two cancelled depositions; the Government shall submit a declaration itemizing those fees and costs **no later than thirty (30) days from date of this Order**; Claimant may file its objections, if any, **no later than five (5) days** after the Government's submission.


UNITED STATES DISTRICT JUDGE