

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. THOMAS AND ST. JOHN

**BORINQUEN EXCAVATORS EQUIPMENT,
INC.,**

Plaintiff,

v.

**FIRST AMERICAN DEVELOPMENT
GROUP/CARIB, LLC, WHARTON-SMITH,
INC., and WMK MECHANICAL GROUP,
LLC,**

Defendants.

3:09-cv-22

WMK MECHANICAL GROUP, LLC,

Third-Party Plaintiff,

v.

**KINSMAN HEAVY EQUIPMENT RENTAL,
INC.,**

Third-Party Defendant.

**TO: Eugenio W.A. Geigel-Simounet, Esq.
Henry C. Smock, Esq.
John H. Benham, III, Esq.
Chad C. Messier, Esq.,**

ORDER DENYING MOTION FOR SANCTIONS

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THIS MATTER came before the Court upon Defendant/Third-Party Plaintiff WMK Mechanical Group, LLC's Motion For Discovery Sanctions Against Plaintiff Pursuant to Fed. R. Civ. P. 37 (Docket No. 52). The time for filing a response has expired.

Said Defendant/Third-Party Plaintiff seeks sanctions against Plaintiff for Plaintiff's failure to comply with this Court's Order (Docket No. 51), entered February 4, 2010, wherein counsel were directed to "[d]eliver and supplement written discovery by February 19, 2010," "[e]xchange lists of proposed fact witnesses by February 22, 2010," and "[f]ile copies of the pleadings in the Puerto Rico litigation forthwith." The order also scheduled a status conference for March 16, 2010.

The day following the filing of this motion for sanctions, and seemingly in lieu of a response thereto, Plaintiff filed notice of service of certain discovery, including responses to First Set of Interrogatories from WMK Mechanical Group, LLC. Notice of Service (Docket No. 53).

While the motion at bar was pending, the Court held the status conference as scheduled on March 16, 2010, and issued an order directing counsel to "[m]eet and confer with respect to written discovery by April 1, 2010" and "[p]rovide fact witnesses by April 1, 2010." Order (Docket No. 54), entered March 16, 2010.

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Another status conference was held May 17, 2010, after which the Court ordered that “[l]itigation is pending in Puerto Rico from which counsel will provide copies to al counsel.” Order (Docket No. 61), entered May 17, 2010. The record reflects that counsel for Plaintiff filed an Informative Motion with the court, representing that copies of the pleadings in the Puerto Rico litigation had been served upon the parties. Informative Motion (Docket No. 62).

Having reviewed the motion and the record and upon due consideration thereof, the Court finds that Plaintiff has complied with the order at issue, albeit belatedly. In addition, the Court finds that, in view of the extended deadlines in this matter, said Defendant/Third-Party Plaintiff has failed to articulate with specificity the harm and prejudice suffered by it as a result of Plaintiff’s delayed compliance.

WHEREFORE, it is now hereby **ORDERED** that Defendant/Third-Party Plaintiff WMK Mechanical Group, LLC’s Motion For Discovery Sanctions Against Plaintiff Pursuant to Fed. R. Civ. P. 37 (Docket No. 52) is **DENIED**.

ENTER:

Dated: June 9, 2010

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE