

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

NORMAN C. BLOOM,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:02cv907 (PCD)
	:
MICHAEL A. DOUGLAS,	:
Defendant.	:

**RULINGS ON MOTION TO IMPOSE COSTS AND MOTION TO COMPEL**

Defendant's motion to impose costs of effective service was granted absent opposition.

Plaintiff's motion to compel and for sanctions was denied for failure to comply with the Supplemental Order. As oppositions to those motions have since been filed,<sup>1</sup> the rulings as to those motions of 1/6/03 and 1/7/03 are hereby **vacated**.

Plaintiff moves to compel responses to certain interrogatories and for sanctions for defendant's failure to respond properly. Defendant moves pursuant to FED. R. CIV. P. 4(d) for unnecessary costs incurred in attempting service of process on the three trusts named as third-party defendants. For the reasons set forth herein, the motion to impose costs is **granted in part** and the motion to compel is **denied**.

**I. BACKGROUND**

On May 24, 2002, plaintiff filed the present complaint alleging that defendant engaged in the unauthorized practice of law in Connecticut by charging a fee for legal advice provided to the estate of

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<sup>1</sup> Plaintiff was granted an extension of time in which to respond to the motion to impose costs. Plaintiff's memorandum in opposition was therefore timely filed in light of the extension granted.

plaintiff's father. On October 3, 2002, defendant's motion to implead third-party defendants Norman Bloom, Norman R. Bloom Revocable Trust, Norman R. Bloom Family Spray Trust and Norman R. Bloom Irrevocable Insurance Trust was granted.

## II. MOTION TO IMPOSE COSTS OF EFFECTIVE SERVICE

Defendant moves pursuant to FED. R. CIV. P. 4(d) to impose costs of effective service on third-party defendants Norman R. Bloom Revocable Trust, Norman R. Bloom Family Spray Trust and Norman R. Bloom Irrevocable Insurance Trust. The third-party defendants respond that any resulting difficulties are attributable to confusion resulting from a later-filed case removed to federal court against the same trusts and that the parties otherwise were willing to waive service of process in compliance with FED. R. CIV. P. 4(d).

The following additional facts are relevant to the disposition of the present motion. On August 1, 2002, defendant filed a complaint against the third-party defendants involved herein. On August 14, 2002, the case was removed to federal court in proceedings before Judge Christopher Droney (*Michael A. Douglas v. Norman C. Bloom, et al.*, 3:02cv1416 (CFD)). On August 20, 2002, defendant sent third-party defendant Norman Bloom, trustee for the three trusts, a notice of suit and request for waiver of service of summons requiring a response within sixty days, or by October 19, 2002. By letter dated October 11, 2002, third-party defendants requested that defendant voluntarily dismiss the case pending before Judge Droney and indicated a willingness to execute waiver of service forms in the case pending before this Court.<sup>2</sup> A stipulation of dismissal was filed in the case before

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<sup>2</sup> The letter provides that "in exchange for Mr. Douglas agreeing to withdraw the removed action Mr. Bloom is willing to execute the Waiver of Service forms you have forwarded in respect to the action pending before Judge Dorsey."

Judge Droney on October 28, 2002, and the case was dismissed on October 29, 2002.

The third-party defendants allege that, when notified of the dismissal of the case, they attempted to execute the waiver of service forms only to discover that the forms pertained to the dismissed action. It was then discovered that the forms had been served on the clients, not the attorneys, at which time the period for return had lapsed. The third-party defendants further allege that defendant was contacted on November 4, 2002, and a new waiver form was requested. On November 14, 2002, plaintiff/third-party defendants were served with summons and complaint.

A party is entitled to an award of costs necessary to effect service pursuant to FED. R. CIV. P. 4(d)(2) when the party on whom process is being served “fails to comply with a request for waiver made . . . unless good cause for the failure be shown.” Even if it were appropriate to credit the allegation of the third-party defendants that the failure to respond in a timely manner was attributable to confusion resulting from a second suit brought by defendant, such does not account for the failure to respond to the request for waiver within sixty days. The third-party defendants were obligated to respond by October 19, 2002. It is not disputed that the third-party defendants were served with the notice of suit forms and did not return the same and did not elect to waive service of process. As the waivers were not executed by that date, the burden is theirs to account for the failure. Other than the October 11, 2002 letter, which indicates no more than that the third-party defendants were willing to waive their right to service in exchange for the dismissal of a second action, a right which is not theirs to bargain with, *see Troxell v. Fedders of N. Am., Inc.*, 160 F.3d 381, 383 (7th Cir. 1998), there is no justification for failure to execute the waivers by the designated date. The third-party defendants are therefore obligated to pay costs for effecting service.

Defendant is entitled to costs and reasonable attorney's fees for the motion required to collect costs of service. *See* FED. R. CIV. P. 4(d)(2). Defendant submits that the cost of service was \$123.40 and the fees attendant to the filing of the present motion are \$330, or \$220 per hour for 1.5 hours. As defendant provides no documentation to substantiate an award of attorney's fees, defendant's award is limited to the cost of effecting service, or \$123.40.

### III. MOTION TO COMPEL

Plaintiff moves to compel responses to interrogatories 8, 9, 10, and 11. Defendant responds that his response, which identifies "work sheets" produced allegedly containing information responsive to the interrogatory suffices, and he need not do more.

The response given to each of the subject interrogatories requesting information as to work services provided: "The services are too numerous to list here. Please refer to seven years' worth of my 'work sheets' which I provided in 2002 to Mr. Bloom and to his attorney at their request." Plaintiff does not argue that the documents were not produced as defendant contends, nor that the records produced were voluminous or the answers could not be found therein. Although the party responding has the burden of identifying specific records to the extent that he or she is in a better position to identify records responsive to the interrogatory, *see Daiflon, Inc. v. Allied Chemical Corp.*, 534 F.2d 221, 226 (10th Cir. 1976), there is no obligation to further distill records provided if the records provided are sufficiently narrow that the party serving the interrogatory can derive a response therefrom.

In the present case, it appears that defendant provided a proper response to the interrogatories served and did not simply serve a mass of work records inapplicable to plaintiff as a response to the interrogatories. The work records also would appear to be an appropriate response to questions as to

services provided for plaintiff as they would identify both detail as to the service provided and the related fee provided. As plaintiff provides only the interrogatories and accompanying response, plaintiff has not established that defendant's response is inappropriate or otherwise deficient as is requisite to obtaining an order compelling discovery.

### III. CONCLUSION

The rulings of 1/6/03 granting the motion to impose costs and of 1/7/03 denying the motion to compel are vacated. Defendant's motion to impose costs of effective service (Doc. No. 10) is **granted**. Defendant is hereby awarded \$123.40 for third-party defendants' failure to execute a waiver. Plaintiff's motion to compel and for sanctions (Doc. No. 12) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, January \_\_\_\_, 2003.

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Peter C. Dorsey  
United States District Judge