

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

CASE NO. 08-10084-CIV-MARTINEZ/BROWN

PETER HALMOS, INTERNATIONAL
YACHTING CHARTERS, INC., and
HIGH PLAINS CAPITAL,

Plaintiffs,

v.

INSURANCE COMPANY OF NORTH
AMERICA and STRICKLAND MARINE
INSURANCE, INC., (f/k/a STRICKLAND
MARINE AGENCY, INC.),

Defendants.

**PLAINTIFFS' MOTION TO COMPEL
PAYMENT OF THE JANUARY 22, 2009 INVOICE**

Plaintiffs, International Yachting Charters, Inc., High Plains Capital, and Peter Halmos, hereby file their Motion to Compel Payment of the January 22, 2009 Invoice, as follows:

On January 5, 2009, Plaintiffs made 5,036 documents available for INA's inspection and copying, pursuant to the Court's Order to Meet and Confer [D.E. 3]. INA requested that all 5,036 documents be copied and agreed to pay for the copying charges. The documents were copied on or around January 29, 2009, and Plaintiffs contacted counsel for INA to advise them of the total cost of the copying, \$1,957.16.¹ On June 3, 2009, counsel for INA indicated that "INA is ready to pay the copy cost and retrieve the documents from Mr. Morgan."² On June 29, 2009, Plaintiffs

¹ See January 22, 2009 Office Max Invoice, attached hereto as Exhibit A.

² See email correspondence from Frank J. Sioli to Peter Halmos, dated June 3, 2009, and attached hereto as Exhibit B.

CASE NO. 08-10084-CIV-MARTINEZ/BROWN

delivered to INA copies of the January 5, 2009 documents. Those documents were bates numbered PS000001-PS005036.³ On August 10, 2009, INA had still not reimbursed Plaintiffs for the cost of the copies.⁴ On August 17, 2009, David Paul Horan, counsel for INA, requested and obtained another copy of the documents numbered PS000001-PS005036 from Plaintiffs. INA never reimbursed Plaintiffs for the copying of the January 5, 2009 documents.

Accordingly, the invoice for \$1957.10 remains due and owing, and its payment is not contingent on the outcome of this matter.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order granting Plaintiffs' Motion to Compel Payment of the January 2009 Invoice, and for any further relief the Court deems equitable and proper.

³ The Court should note that at trial, Plaintiffs attempted to admit into evidence a document identified with Bates number PS001380. Counsel for INA objected to the introduction of the document into evidence based upon his implication that documents bearing the "PS" Bates label had never been produced prior to trial:

Mr. DeMahy: This Bates number is different in style and enumeration from any other Bates stamped document I've seen in this case. I haven't seen this...I don't know what "PS" stands for in this case or who produced it.

See Transcript of Bench Trial, Vol. (June 13, 2011) at 54:21-55:2. Based upon INA's implication that the "PS" labeled documents had never been produced, the Court refused to permit it and other similarly labeled documents from being admitted into evidence. *Id.* at 58:5-6. Contrary to INA's assertion, the "PS" labeled documents were part of Plaintiffs' initial production of documents. Further, Plaintiffs' March 5, 2010 Amended Answers to INA's First Interrogatories (attached hereto as Exhibit D) clearly reference the Bates range PS000001-PS005036 no less than forty times. Plaintiffs are therefore at a loss as to how INA can claim to have been surprised at trial by documents bearing a "PS" Bates number.

⁴ See email correspondence from Peter Halmos to Kenneth G. Engerrand, dated August 10, 2009, and attached hereto as Exhibit C.

CASE NO. 08-10084-CIV-MARTINEZ/BROWN

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on September 14, 2011 on all counsel or parties of record on the Service List below.

s/Stephen A. Marino, Jr.
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CASE NO. 08-10084-CIV-MARTINEZ/BROWN

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