

VT SUPERIOR COURT
WASHINGTON UNIT
STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION

Docket No. 697-11-16 Wncv

INTERNATIONAL INSURANCE COMPANY OF
HANNOVER SE, a/s/o Bourne's Inc. d/b/a
Bourne's Energy
Plaintiff

v.

PETER C. O'BRIEN d/b/a O'BRIEN PROPERTY
MANAGEMENT, LLC
Defendant

ORDER

Defendant in this case is a limited liability company. "A limited liability company is a legal entity distinct from its members." 11 V.S.A. § 4021. "'Entity' means a person other than an individual." 11 V.S.A. § 4001(11). Ordinarily, an organizational party must be represented by a licensed attorney in court. *Vermont Agency of Nat. Res. v. Upper Valley Reg'l Landfill Corp.*, 159 Vt. 454, 455 (1992).

Thus far, the court has permitted Defendant to be represented by its non-attorney principal, Mr. Peter O'Brien, pursuant to 11A § 3.02(1) and 11 V.S.A. § 4011(g)(2)(A). The court has made clear repeatedly during court hearings that failure to comply with the rules of civil procedure, including in particular Defendant's discovery obligations, could cause the court to withdraw approval and require representation by counsel, and may justify sanctions to ameliorate the burdens and expense Defendant's self-representation has caused.

At this point, after initial noncompliance, Mr. O'Brien has finally made some effort at responding to Plaintiff's discovery requests. The effort, however, is deficient, does not reflect promise that this case can move forward constructively from here while Mr. O'Brien represents Defendant, and prompted another reasonable motion to compel by Plaintiff.

The primary purpose of the "lawyer-representation rule" is the protection of the public, not the creation of any private advantage for attorneys. Courts have generally refused to permit nonattorneys to represent organizations because they do not have the ethical responsibilities of attorneys and are not subject to the disciplinary control of the courts. The lawyer-representation rule also ensures that the courts have control over the management and administration of cases. . . . "[T]he conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative." Courts

have also refused to allow representation by nonlawyers who did not have the legal ability to present their case.

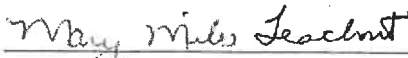
Vermont Agency of Nat. Res., 159 Vt. at 455–56 (citations omitted).

To facilitate the “just, speedy, and inexpensive” disposition of this case, the court now terminates approval of nonattorney representation by Mr. O’Brien and requires Defendant to be represented by a licensed attorney. V.R.C.P. 1. Mr. O’Brien no longer may represent Defendant.

Defendant has 30 days to have an attorney enter the case on its behalf. That counsel then will have an additional 30 days to supplement Mr. O’Brien’s discovery responses according to the rules. If no appearance is entered by counsel within 30 days, Defendant may become subject to a judgment against it by default. The court will not impose any sanctions for failure to comply with discovery at this time.

Plaintiff’s motion to compel is granted on the terms stated herein.

Dated at Montpelier, Vermont this 16th day of March 2018.



Mary Miles Teachout
Superior Judge