

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PEKIN INSURANCE COMPANY,)
)
 Plaintiff,)
)
 vs.)
)
 VETERAN CONSTRUCTION) 1:13-cv-00147-RLY-DML
 COMPANY, INC.,)
 MATTHEW SLABAUGH,)
 BOBBIE SLABAUGH,)
)
 Defendants.)

**ENTRY ON PEKIN’S VERIFIED MOTION FOR DEFAULT JUDGMENT
AGAINST VETERAN CONSTRUCTION COMPANY, INC.**

Plaintiff, Pekin Insurance Company, requests default judgment be entered, pursuant to Federal Rule of Civil Procedure 55, against Veteran Construction Company, Inc. (“Veteran”). The Slabaughs join in this request. The court having reviewed Plaintiff’s verified motion, hereby finds it should be **GRANTED**.

On February 11, 2013, Pekin filed its Amended Complaint for Declaratory Judgment. Veteran has since failed to answer Pekin’s Amended Complaint. Furthermore, in the court’s order granting the withdrawal of Veteran’s counsel on July 26, 2013, the court ordered Veteran to have an appearance by counsel on file by August 16, 2013, or an entry of default would likely be entered against Veteran. Veteran has not complied with this order.

Granting default judgment is in the discretion of the district court. *Merrill Lynch Mortgage Corp. v. Narayan*, 908 F.2d 248, 250 (7th Cir. 1990). Typically, granting default judgment is a two-step process, with a default first being entered by the clerk or court, then the clerk or court entering a default judgment. *Johnson v. Lyon*, No. 1:06-cv-1289-DFH-TAB, 2008 WL 5396606, *2 (S.D. Ind. Dec. 24, 2008) (citations omitted). However, if no default has been entered, a court may treat a motion for default judgment as a request for both an entry of default and an entry of default judgment. *Wolf Lake Terminals, Inc. v. Mut. Marine Ins. Co.*, 433 F. Supp. 2d 938, 941 (N.D. Ind. 2005).

In this case, no default has been entered. However, the court finds that Veteran's noncompliance with the court's order to file an appearance by counsel and Veteran's failure to answer Pekin's Amended Complaint warrant an entry of default and default judgment against Veteran.

IT IS THEREFORE ORDERED, pursuant to Federal Rule of Civil Procedure 55, Pekin's Verified Motion for Default Judgment Against Veteran Construction Company, Inc. (Docket # 42) is **GRANTED**. Therefore, default and default judgment are hereby entered in favor of Pekin Insurance Company against Veteran Construction Company, Inc.:

A. Declaring that Pekin Insurance Company has no duty under its Commercial Lines Policy No. CL0133400-0, issued to Veteran as the named insured, with effective dates of coverage of January 26, 2011 to January 26, 2012 ("Primary Policy"), to defend Veteran against the following legal proceeding: *Matthew Slabaugh and Bobbie*

Slabaugh, Plaintiffs v. Veteran Constr. Co., Inc., Defendant, Cause No. 49D07-010516,
Marion Superior Court No. 7 (“Lawsuit”);

B. Declaring that Pekin Insurance Company has no duty under the Primary Policy to indemnify Veteran against the Lawsuit;

C. Declaring that Pekin Insurance Company has no duty under its Commercial Umbrella Policy No. CU23864-0, issued to Veteran as the named insured, with effective dates of coverage of January 26, 2011 to January 26, 2012 (“Umbrella Policy”), to defend Veteran against the Lawsuit; and

D. Declaring that Pekin Insurance Company has no duty under the Umbrella Policy to indemnify Veteran against the Lawsuit.

IT IS FURTHER ORDERED that this default judgment is binding only against Veteran and does not prejudice the rights of Matthew Slabaugh or Bobbie Slabaugh.

Pursuant to *Araiza v. Chrysler Ins. Co.*, 699 N.E.2d 1162 (Ind. Ct. App. 1998) (rehearing at 703 N.E.2d 661), this default judgment does not in any way affect Matthew or Bobbie Slabaugh’s right to litigate and argue Pekin’s duty to indemnify Veteran in conjunction with the Lawsuit.

SO ORDERED this 24th day of October 2013.


RICHARD L. YOUNG, CHIEF JUDGE
United States District Court
Southern District of Indiana

Distribution Electronically to Registered Counsel of Record.