

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DAVID E. CALKINS,)	CASE NO. 3:07CV00025
)	
Plaintiff,)	
v.)	<u>ORDER</u>
)	
PACEL CORPORATION,)	
)	
Defendant,)	By: B. WAUGH CRIGLER
v.)	U.S. MAGISTRATE JUDGE
)	
PACEL CORPORATION,)	
)	
Counterclaim Plaintiff,)	
)	
v.)	
)	
DAVID E. CALKINS,)	
F. KAY CALKINS, AND)	
DUCHESS FARM, LLC,)	
)	
Counterclaim Defendants.)	

On March 25, 2008, the undersigned entered an Order in conformity with a Memorandum Opinion of even date, awarding Pacel Corporation (“Pacel”) sanctions against David E. Calkins, F. Kay Calkins, and Duchesse Farms, LLC (collectively “counterclaim defendants”) for Pacel’s attorneys’ fees in the amount of \$18,850.00, reserving apportionment for a later date. The March 25, 2008 Memorandum Opinion provided that, because apportionment of the award could create a conflict of interest between the parties and their counsel, the issue of apportionment would be revisited once the substantive issues in the case were resolved. (Dkt. No. 80, p. 1 n.1.)

On June 4, 2008, the presiding District Judge entered default judgment, only on the issue of liability, against counterclaim defendants F. Kay Calkins and Duchesse Farms, LLC. (Dkt. No. 85.) However, the liability of plaintiff and counterclaim defendant, David E. Calkins, has

not been determined. On July 31, 2008, sanctions against counterclaim defendants F. Kay Calkins and Duchesse Farms, LLC in the amount of \$18,150.00 were awarded to counsel for Pacel, with the issue of apportionment thereof set before the undersigned on August 13, 2008. (Dkt. No. 106.) On the same date Hirschler Fleischer, P.C. was permitted to withdraw as counsel for Pacel. (Dkt. No. 107.)

At the August 13, 2008 before the undersigned, the court was informed that the parties sought a stay of proceedings in order to engage in settlement negotiations on all issues in the case. The undersigned entered an Order staying proceedings until September 15, 2008 to allow such negotiations to occur. (Dkt. No. 113.)

On August 27, 2008, the undersigned received a letter from Pacel's former counsel, Christopher E. Gatewood, requesting a modification of the March 25, 2008 Order to reflect that his law firm, Hirschler Fleischer, P.C., rather than Pacel, is to recover the \$18,850.00 in sanctions. It is represented in the letter that Pacel has consented to such modification, which the undersigned receives as a representation of fact by an officer of the court. The undersigned hereby deems counsel's August 27, 2008 letter as a motion for modification.

Finding that the modification does not affect the liability of the counterclaim defendants under the March 25, 2008 Order, and that there is no prejudice, especially in light of the fact that apportionment of that liability has not been made, and finding reasonable grounds and good cause set forth in the letter motion to modify the award of sanctions, it hereby is

O R D E R E D

as follows:

(1) The Clerk is hereby directed to docket as "Filed" the August 27, 2008 letter as a motion for modification;

(2) The August 27, 2008 letter motion hereby is GRANTED;

(3) The undersigned's March 25, 2008 Order, which awarded sanctions against the counterclaim defendants, hereby is MODIFIED to reflect that "Hirschler Fleischer, P.C. shall have and recover the amount of \$18,850 in sanctions.";

(4) Apportionment of such award among the counterclaim defendants and their counsel remains undetermined until the liability of plaintiff and counterclaim defendant David E. Calkins has been resolved.

The Clerk of the Court hereby is directed to transmit a copy of this Order to all counsel of record; Gary Musselman and Frank Moody at Pacel Corporation, 7621 Little Avenue, Suite 101, Charlotte, North Carolina 28226; and Christopher E. Gatewood, Esq., Hirschler Fleischer, P.C., The Edgeworth Building, 2100 East Cary Street, Richmond, Virginia 23223.

ENTERED: _____
United States Magistrate Judge

Date