

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

HDI Global Insurance Company v. A. Duie Pyle Inc. and Ex-Works, Inc.

HDI Global · No. 25-CV-3299 (NGG) (TAM) · Decided January 9, 2026

SUMMARY

The Eastern District of New York adopted a magistrate judge’s Report and Recommendation and dismissed the action without prejudice under Federal Rule of Civil Procedure 4(m). The court found that Plaintiff failed to properly serve A. Duie Pyle Inc. within the required period, despite repeated orders and warnings, and directed the Clerk of Court to close the case.

CASE DETAILS

COURT	United States District Court for the Eastern District of New York
WRITING FOR THE COURT	Nicholas G. Garaufis
JURISDICTION	United States District Court for the Eastern District of New York
DECIDED	January 9, 2026
DOCKET	25-CV-3299 (NGG) (TAM)
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending dismissal without prejudice for failure to serve Defendant A. Duie Pyle Inc. within the time required by Federal Rule of Civil Procedure 4(m). No party filed objections.
STANDARD OF REVIEW	For an unobjected-to Report and Recommendation, the district court reviews for clear error on the face of the record.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- service of process
- civil procedure
- commercial litigation
- commercial

PRACTICE AREAS

- civil procedure
- commercial litigation
- insurance
- cargo transportation

QUESTIONS PRESENTED

1. Whether the district court should adopt an unobjected-to Report and Recommendation after reviewing it for clear error.
2. Whether dismissal without prejudice was required under Federal Rule of Civil Procedure 4(m) because Plaintiff failed to properly serve A. Duie Pyle Inc. within 90 days and did not show good cause for the failure.

HOLDINGS

1. When no objections are filed after adequate notice, the district court reviews the magistrate judge's Report and Recommendation for clear error on the face of the record.
2. An action must be dismissed without prejudice when a plaintiff fails to serve a defendant within 90 days, does not file proper proof of service despite notice and repeated opportunities, and fails to show good cause for the failure.

KEY QUOTATIONS

“Clear error is “found only when, upon review of the entire record, the [c]ourt is left with ‘the definite and firm conviction that a mistake has been committed.’” (II)

“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (II)

FACTUAL BACKGROUND

Plaintiff filed an action concerning allegedly damaged valves transported by Defendants. Plaintiff filed an executed waiver of service for Ex-Works but submitted an invalid waiver for A. Duie Pyle because it was executed only by Plaintiff's counsel. Despite repeated orders and warnings directing Plaintiff to file proper proof of service, Plaintiff failed to do so by the Rule 4(m) deadline or by subsequent extended deadlines.

PROCEDURAL HISTORY

HDI Global Insurance Company filed an action seeking damages based on allegedly damaged valves shipped by the defendants. Ex-Works, Inc. was dismissed by stipulation, leaving A. Duie Pyle Inc. as the sole defendant. After Plaintiff failed to file proper proof of service despite repeated court orders and warnings, Magistrate Judge Taryn A. Merkl recommended dismissal without prejudice under Rule 4(m). The district court reviewed the unobjected-to recommendation for clear error, found none, adopted it in full, dismissed the action without prejudice, and directed the Clerk to close the case.

DISPOSITION

dismissed

CASES CITED

- Colvin v. Berryhill, 734 F. App'x 756, 758 (2d Cir. 2018)
- United States v. Veeraswamy, 765 F. Supp. 3d 168, 180 (E.D.N.Y. 2025)
- United States v. Snow, 462 F.3d 55, 72 (2d Cir. 2006)
- Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK HDI GLOBAL INSURANCE COMPANY, MEMORANDUM & ORDER Plaintiff, 25-CV-3299 (NGG) (TAM) - against- A. DUIE PYLE INC. and EX-WORKS, INC., Defendants. NICHOLAS G. GARAUFIS, United States District Judge.

On June 12, 2025, Plaintiff HDI Global Insurance Company ('Plaintiff') instituted this action against Defendants A. Duie Pyle Inc. and Ex-Works, Inc., seeking to recover monetary damages based on Defendants' shipment of allegedly damaged valves. (See generally Compl. (Dkt. 1).)

On October 6, 2025, the court entered Plaintiffs stipulation of dismissal as to Ex-Works, leaving A. Duie Pyle the sole defendant in this case. (Order Entering Stip. of Dismissal (Dkt. 13).) On October 20, 2025, the assigned magistrate judge noted the deficiency in Plaintiffs purported waiver of service on Defendant A. Duie Pyle Inc., and ordered Plaintiff to file proper proof of service by October 24, 2025.¹ (Text Order Dated 10/20/2024.)

Plaintiff did not do so. Despite multiple warnings from Magistrate Judge Taryn A. Merkl, Plaintiff has repeatedly failed to file proof of service as required under Rule 4(m) of the Federal Rules of Civil Procedure ("Rule 4(m)"). (See *id.*; Text Order Dated 10/27/2025; Text Order Dated 11/12/2025.) Consequently, the court referred the 1 On July 22, 2025, Plaintiff filed a purported waiver of service as to Defendant A. Duie Pyle Inc., which would have rendered its answer due by September 22, 2025, except that it was executed only by Plaintiffs counsel.

(See Unexecuted Waiver of Service (Dkt. 7).) issue of whether this case should be dismissed under Rule 4(m) and Rule 41(b) of the Federal Rules of Civil Procedure to Magistrate Judge Merkl for a report and recommendation. (Order of Referral Dated 12/10/2025.) Magistrate Judge Merkl subsequently issued the annexed Report and Recommendation ("R&R"), recommending that this case be dismissed without prejudice pursuant to Rule 4(m), and that the case be closed.

(R&R (Dkt. 14).) The court now ADOPTS the R&R in full. I. STANDARD OF REVIEW In reviewing a report and recommendation, a district court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 280U.S.C. § 636(b) (1). If no objections have been made, the district court "need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed R. Civ.

P, 72(b) advisory committee's note to 1983 amendment; see also *Colvin v. Berryhill*, 734 F. Appx 756, 758 (2d Cir. 2018) (summary order) (“[Where] a party receives clear notice of the consequences of not objecting to a report and recommendation, the party’s failure to object to any purported error or omission in a magistrate judge’s report results in the district court’s review only for clear error.”).^{*} Clear error is “found only when, upon review of the entire record, the [c]ourt is left with ‘the definite and firm conviction that a mistake has been committed.’” See *United States v. Veeraswamy*, 765 F. Supp. 3d 168, 180 (E.D.N.Y.

2025) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)). II. DISCUSSION No party has objected to the R&R, and the time to do so has passed. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).² When quoting cases, unless otherwise noted, all citations and internal quotation marks are omitted, and all alterations are adopted.

Therefore, the court reviews the R&R for clear error. *Colvin*, 734 F. App’x at 758. (See also R&R at 3 (“Objections to this [R&R] must be filed... within fourteen (14) days of filing. Failure to file objections within the specified time waives the right to appeal both before the district court and appellate courts.”) (citations omitted).)

Having found none, the court adopts the R&R in full. In pertinent part, Rule 4(m) provides that: If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Given the Complaint was filed on June 12, 2025, Plaintiff was required to serve Defendant A. Duie Pyle Inc. by September 10, 2025. *Id.*; see also Fed. R. Civ. P. 6(a) (providing method for computing time).

To date, Plaintiff has failed to file proper proof of service despite receiving adequate notice.^{*} (See Unexecuted Waiver of Service; Text Order Dated 9/24/2025; Text Order Dated 10/20/2025; Text Order Dated 10/27/2025; Text Order Dated 11/12/2025.)

Because Plaintiff has not shown good cause for its failure, the court must dismiss this action without prejudice. See Fed. R. Civ. P. 4(m).³ Indeed, Magistrate Judge Merkl specifically directed Plaintiff to file proper proof of service three times after the 90-day deadline had passed. (See Text Order Dated 10/20/2025; Text Order Dated 10/27/2025; Text Order Dated 11/12/2025.)

III. CONCLUSION For the foregoing reasons, the R&R is ADOPTED in full. The case is therefore DISMISSED without prejudice for failure to comply with the service requirements of Rule 4(m). The Clerk of Court is respectfully DIRECTED to close the case. SO ORDERED. Dated: — Brooklyn, New York January 4, 2026 s/Nicholas G. Garaufis NICHOLAS G. GARAUFI! United States District Judge UNITED STATES DISTRICT COURT EASTERN

DISTRICT OF NEW YORK we ener K HDI GLOBAL INSURANCE COMPANY, Plaintiff, -
against- REPORT AND 5 RECOMMENDATION A. DUIE PYLE INC. and EX-WORKS, 25-CV-
3299 (NGG) (TAM) INC,,.

Defendants. ee eK TARYN A. MERKL, United States Magistrate Judge: On June 12, 2025, Plaintiff HDI Global Insurance Company (“Plaintiff”) filed a complaint against Defendants A. Duie Pyle Inc. and Ex-Works, Inc. (“Defendants”), seeking a recovery under 49 U.S.C. § 14706! based on Defendants’ interstate delivery of valves, which were alleged to have been damaged during shipping.

Compl., ECF 1. On that date, the Clerk of Court issued summons for Defendants.? On July 15, 2025, Plaintiff filed an executed waiver of service as to Defendant Ex-Works, Inc., rendering its answer due September 9, 2025. ECF 6.

On July 22, 2025, Plaintiff filed a purported waiver of service as to Defendant A. Duie Pyle Inc., which would have rendered its answer due by September 22, 2025, except that it was executed only by Plaintiff's counsel. ECF 7; see Oct. 20, 2025 ECF Order. 1 The Court notes that the complaint cites 49 U.S.C. § 1470, but based on the nature of the claim, the Court interprets this to be a case brought under the Carmack Amendment.

Compl., ECF 1, { 1. 2 Shortly after the Complaint was filed, the case was designated to participate in the Court’s compulsory arbitration program. June 16, 2025 ECF Case Referral. On September 24, 2025, the Court extended Defendants’ time to answer to October 15, 2025, and directed Plaintiff to provide Defendants with a copy of the Court’s Order by September 30, 2025, and to file proof of the same on ECF.

Sept. 24, 2025 ECF Order. Plaintiff did not do so. Following the subsequent dismissal of Defendant Ex-Works, Inc.,³ on October 20, 2025, the Court noted the deficiency in Plaintiff’s purported waiver of service on Defendant A. Duie Pyle Inc., and ordered Plaintiff to file proper proof of service on ECF by October 24, 2025.

To date, despite multiple warnings, Plaintiff has not filed proof of service. Accordingly, the Court recommends dismissal without prejudice under Federal Rule of Civil Procedure 4(m). Federal Rule of Civil Procedure 4 provides, in pertinent part, that: If a defendant is not served within 90 days after the complaint is filed, the court — on motion or on its own after notice to the plaintiff — must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m). Under Rule 4(m), Plaintiff was required to serve Defendant A. Duie Pyle Inc. with the complaint and summons by September 10, 2025.

However, since filing this lawsuit on June 12, 2025, Plaintiff has failed to file proper proof of service as to that Defendant. See ECF 7 (unexecuted waiver of service); Sept. 24, 2025 ECF Order; Oct. 20, 2025 ECF Order; Oct. 27, 2025 ECF Order; Nov. 12, 2025 ECF Order.

The Court has specifically directed Plaintiff to file proper proof of service three times after the 90-day service deadline passed. First, on October 20, 2025, the Court observed that Plaintiff's purported waiver of service was not executed by anyone other than Plaintiff's counsel, and directed Plaintiff to file proper proof of service for the summons and complaint, the Court's September 24, 2025 Order, and the Court's October 20, 2025 Order by October 24, 2025. Oct. 20, 2025 ECF Order. Then, when Plaintiff failed to meet the October 24, 2025 deadline, the Court ordered Plaintiff to file proof of service by November 10, 2025, and warned Plaintiff that failure to do so could result in dismissal for failure to serve under Rule 4(m) and for failure to prosecute under Rule 41(b).

6, 2025 Order, ECF 13 (entering stipulation of dismissal as to Defendant Ex-Works, Inc.). Plaintiff's counsel, and directed Plaintiff to file proper proof of service for the summons and complaint, the Court's September 24, 2025 Order, and the Court's October 20, 2025 Order by October 24, 2025. Oct. 20, 2025 ECF Order. Then, when Plaintiff failed to meet the October 24, 2025 deadline, the Court ordered Plaintiff to file proof of service by November 10, 2025, and warned Plaintiff that failure to do so could result in dismissal for failure to serve under Rule 4(m) and for failure to prosecute under Rule 41(b).

Oct. 27, 2025 ECF Order (quoting Fed. R. Civ. P. 4(m), 41(b)). Finally, when Plaintiff again failed to meet this extended deadline, the Court again warned Plaintiff that failure to file proper service by December 3, 2025, would result in the instant recommendation for failure to serve under Rule 4(m). Nov. 12, 2025 ECF Order. Plaintiff again failed to file proof of service by the deadline.

See generally Docket. For the foregoing reasons, it is respectfully recommended that this case be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This Report and Recommendation will be filed electronically. Objections to this Report and Recommendation must be filed, with a courtesy copy sent to the Honorable Nicholas G. Garaufis at 225 Cadman Plaza East, Brooklyn, New York 11201, within fourteen (14) days of filing.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); see also Fed. R. Civ. P. 6(a) (providing the method for computing time). Failure to file objections within the specified time waives the right to appeal both before the district court and appellate courts. See, e.g., *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (explaining that "failure to object timely to a... report [and recommendation] operates as a waiver of any further judicial review of the magistrate [judge's] decision" (quotation marks omitted)).

SO ORDERED. Dated: Brooklyn, New York December 10, 2025 —_ (aye A. Wurke TARYN A. MERKL UNITED STATES MAGISTRATE JUDGE