

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 07-1179-JTM
)	
JAMES P. CRAWFORD and)	
STATE OF KANSAS,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the court on the State of Kansas' Application for Entry of Default against defendant James P. Crawford (Dkt. No. 10).

Default in favor of the State of Kansas will not be entered by the means sought. Under Fed.R.Civ.P. 55, there are two ways that a party may obtain default: (a) by the Clerk - if the plaintiff is seeking "a sum certain or for a sum which by computation can be made certain" - or (b) by the Court, "in all other cases." The State of Kansas seeks a default judgment from the Clerk, both by the express terms of the Application itself, as well as the proposed order submitted to the court.

Default by the Clerk should not be entered. As noted above, entry by the Clerk is warranted only if there is a sum certain. Here, the Complaint does contain a reference to a specific in rem judgment sought against the cross-claim defendant. But the Application then proceeds to ask "to foreclose his interest in the subject real property as set forth in the Cross-Claim." (Dkt. No. 10, at 2). Pursuant to the Cross-Claim, this would require a determination of

the merits of the respective liens, and thus would require further investigation, documentation, and proof in the manner set forth in Rule 55(a)(2), and an establishment of the right to relief under Rule 55(e).

Accordingly, the court will not enter the proposed order, and instead construes the Dkt. No. 10 Application as an Application for default to the court. Pursuant to this construction, the State of Kansas shall supply any additional argument or proof on or before April 11, 2008. The United States shall submit any response to the Application for default on or before April 25, 2008.

IT IS SO ORDERED this 26th day of March, 2008.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE