

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PACIFIC MARINE CENTER, INC.,
Plaintiff,
v.
PHILADELPHIA INDEMNITY
INSURANCE COMPANY,
Defendant.

No. 1:13-cv-00992-DAD-SKO

ORDER DENYING IN PART EX PARTE
APPLICATION TO EXTEND TIME TO FILE
FINDINGS OF FACT AND CONCLUSIONS
OF LAW

(Doc. No. 192.)

Between October 18, 2016 and October 27, 2016, this court conducted a bench trial in this action. On the final day of trial, and after consulting with counsel regarding the time needed by them, the court directed the parties to each submit proposed findings of fact and conclusions of law of no more than twenty pages in length by November 9, 2016. (Doc. No. 187.) Additionally, the court advised the parties via minute order entered at the close of trial that no rough draft trial transcripts could be used for this purpose and directed the parties to contact the appropriate court reporters if an official trial transcript was deemed necessary by them. (Doc. No. 188.)

Early on November 8, 2016, the last day before the required proposed findings were to be filed, the court received multiple inquiries from plaintiff’s counsel concerning trial transcripts, including whether the use of rough drafts of transcripts was permitted in connection with the proposed findings of fact and conclusions of law. After being directed by chambers staff to the previously entered minute order, late in the day on November 8, 2016 plaintiff’s counsel

1 submitted an expedited request for official trial transcripts and filed an *ex parte* application to
2 extend the time to file findings of fact and conclusions of law. (Doc. Nos. 191, 192.)¹ In support
3 of the application for an extension of time plaintiff’s counsel submitted a declaration stating that
4 “due to [his] own neglect,” he did not read the court’s prior order prohibiting citation to rough
5 drafts of trial transcripts. (Doc. No. 192-1 at 1.) Therein, plaintiff’s counsel requested the court’s
6 indulgence and asked for a nine-day extension of time to file plaintiff’s proposed findings of fact
7 and conclusions of law so that he could obtain official transcripts of the trial proceedings and
8 include citations to that official transcript in his filing. (*Id.* at 2.)

9 Plaintiff’s *ex parte* application will be denied in part. Counsel’s failure to review the
10 court’s October 27, 2016 minute order provides no basis for extending the time for the parties’
11 submission of proposed findings of fact and conclusions of law. The court has indulged counsel
12 with respect to scheduling and the conducting of the trial in this case which has been pending
13 before the court for almost three and one half years. The court will not grant an extension of time
14 to allow either party to obtain official trial transcripts, especially since the parties were advised at
15 the conclusion of trial regarding the limitations on the use of rough drafts of transcripts and
16 nonetheless did not request preparation of an official transcript until the eve of the filing deadline
17 set by the court. Moreover, the court heard the testimony at trial and is in a position to consider
18 all of the evidence admitted and to weigh the credibility of the witnesses. The court does not
19 anticipate having an official trial transcript available in issuing its final judgment and does not
20 believe that an official transcript is necessary for that purpose.

21 Because it appears that plaintiff’s counsel may need some time to edit his proposed
22 findings of fact and conclusions of law as drafted in order to remove citations to the rough draft
23 transcripts he possesses, the court will grant him one additional day to do so. For the reasons set
24 forth above, plaintiff’s *ex parte* motion for an extension of time to file proposed findings of fact
25 ////

26
27 ¹ Plaintiff’s motion for an extension of time erroneously reflects the prior case number of 1:13-
28 CV-00992-AWI-SKO. (Doc. No. 192.) This case was reassigned on December 15, 2015, and a
new case number of 1:13-CV-00992-DAD-SKO was assigned to it. (Doc. No. 66.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and conclusions of law (Doc. No. 192) is granted in part and the parties' submissions in this regard now must be filed by November 10, 2016.

IT IS SO ORDERED.

Dated: November 9, 2016


UNITED STATES DISTRICT JUDGE