

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  
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

DALE M. WALLIS, D.V.M., JAMES L. WALLIS, and HYGIEIA BIOLOGICAL LABORATORIES, INC., a California Corporation, NO. CIV. 2:08-02558 WBS GGH  
ORDER

Plaintiffs,

v.

CENTENNIAL INSURANCE COMPANY, INC., a New York corporation, and ATLANTIC MUTUAL INSURANCE, CO., INC., a New York corporation,

Defendants,

\_\_\_\_\_ /

AND RELATED COUNTERCLAIMS AND THIRD-PARTY COMPLAINT.

\_\_\_\_\_ /

-----oo0oo-----

All the parties have filed objections (See Docket Nos. 234, 235, 238.) the Final Pretrial Order ("Order"), (Docket No. 233), filed in this case on August 7, 2013.

1 I. Defendants' Objection to the Final Pretrial Order

2 Pursuant to defendants request, the Order is amended  
3 such that no later than seven calendar days before the trial  
4 date, counsel for each party shall file trial briefs pursuant to  
5 Local Rule 16-285.

6 II. Third-Party Defendant Mendoza's Objections to the Order

7 Pursuant to defendant Mendoza's objection, the Order is  
8 amended to add as Mendoza's exhibits those documents listed on  
9 pages 14-15 of her Objections and Requests for Modification to  
10 the Court's Final Pretrial Order. (TPD's Objections at 14:28-  
11 15:26 (Docket No. 235).) Mendoza's exhibits shall bear numbers,  
12 commencing with the first number not used by plaintiffs. All  
13 issues raised in defendant Mendoza's objections that have not  
14 been ruled upon in prior orders will be dealt with at the time of  
15 trial.

16 III. Plaintiffs' Objections to the Order

17 A. Bond

18 Even if defendants were required to post a bond  
19 pursuant to sections 1616 et seq. of the California Insurance  
20 Code by virtue of becoming insolvent during this action,  
21 plaintiffs' request, on the eve of trial, is untimely. By May 1,  
22 2012, plaintiffs knew that the court would not stay this case  
23 because of defendants' liquidations. (See May 1, 2012 Order  
24 (Docket No. 141).) On that same date, the court also lifted the  
25 stay over all claims not subject to arbitration. (Id. at 8:6-9.)  
26 Plaintiffs have since allowed the case to proceed for over a year  
27 without any request for a bond. They provide no explanation as  
28

1 to why they waited until this late date to request a bond.<sup>1</sup> The  
2 bond request also remains insufficiently documented.

3 B. Default of Atlantic Mutual

4 Plaintiffs' request for a hearing before trial on the  
5 issue of Atlantic Mutual's default is also untimely. Plaintiffs  
6 did not raise the issue of Atlantic Mutual's failure to file a  
7 timely answer at the pretrial conference held on August 5, 2013.  
8 At that time, the answer was already late. Immediately after  
9 plaintiffs raised the issue in their objections to the Order,  
10 Atlantic Mutual filed its answer. (See Docket No. 239.) Counsel  
11 for Atlantic Mutual states that the failure to file the answer by  
12 August 2, 2013 was a mistake. (Evans Decl. ¶ 10 (Docket No. 239-  
13 2).)

14 As it appears that there will be no prejudice to  
15 plaintiffs because the answer was eleven days late, the court  
16 denies plaintiffs' request for a hearing on whether default  
17 should be entered as to Atlantic Mutual.

18 IT IS SO ORDERED.

19 DATED: August 16, 2013

20  
21 

22 WILLIAM B. SHUBB  
23 UNITED STATES DISTRICT JUDGE  
24  
25

---

26 <sup>1</sup> Plaintiffs now object to Atlantic Mutual filing an  
27 answer to the First Amended Complaint without first posting a  
28 bond. They made no such objection when Centennial filed its  
answer to the First Amended Complaint on April 18, 2013.  
(See Docket No. 218.)