

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SUSAN BRENNER, et al.,)	CASE NO. 5:16-cv-1117
)	
PLAINTIFFS,)	JUDGE SARA LIOI
)	
vs.)	
)	MEMORANDUM OPINION
LM GENERAL INSURANCE COMPANY,)	AND ORDER
)	
DEFENDANT.)	

The Court is in receipt of plaintiff's untimely jury demand. (Doc. No. 41.) For the reasons set forth herein, the jury demand is stricken and this case will proceed as planned with a trial to the Court.

Plaintiffs filed this action in Stark County Court of Common Pleas on April 20, 2016. No jury was demanded in the original complaint. (*See* Doc. No. 1-3 [sealed].) After removal to this Court, a first amended complaint was filed on May 17, 2016; it also contained no jury demand. (*See* Doc. No. 8.) On May 18, 2016, defendant filed its answer to the first amended complaint, also with no jury demand. (*See* Doc. No. 9.)

The Court conducted the Case Management Conference on June 28, 2016, and issued the Case Management Plan and Trial Order (CMPTO) setting a non-jury trial on a two-week standby basis for May 1, 2017. (*See* Doc. No. 16.) On February 14, 2017, upon the parties' joint motion, the Court amended the CMPTO, continuing the non-jury trial to the two-week standby period beginning July 31, 2017. (*See* Doc. No. 40.) The next day, plaintiffs filed their jury demand. (Doc. No. 41.)

Fed. R. Civ. P. 38(b) provides, in relevant part, that “a party may demand a jury trial by: (1) serving the other parties with a written demand—which may be included in a pleading—no later than 14 days after the last pleading directed to the issue is served[.]” On this record, a jury demand would have been due 14 days after defendant’s answer was filed. No such timely demand was filed.

Rule 38(d) provides, in relevant part, that “[a] party waives a jury trial unless its demand is properly served and filed.” “Such a waiver is complete and binding ‘even though it was inadvertent and unintended and regardless of the explanation or excuse.’” *Root v. Consol. Freightways Corp. of Delaware, Inc.*, No. 86-6149, 1987 WL 24092, at *1 (6th Cir. Dec. 1, 1987) (quoting *Washington v. NYC Bd. of Estimate*, 709 F.2d 792, 797-98 (2d Cir.), *cert. denied*, 464 U.S. 1013 (1983).)

Plaintiff’s jury demand (Doc. No. 41) is stricken from the record.

IT IS SO ORDERED.

Dated: February 16, 2017



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE