

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TRANSCONTINENTAL	:	CIVIL ACTION NO. 1:13-CV-2163
REFRIGERATED LINES, by	:	
LAWRENCE V. YOUNG, ESQ.,	:	(Chief Judge Conner)
Liquidating Agent,	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
NEW PRIME, INC., et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 24th day of February, 2016, upon consideration of the motion (Doc. 193) for default judgment by plaintiff and debtor Transcontinental Refrigerated Lines, Inc. (“Transcontinental”), wherein Transcontinental requests that the court enter default judgment against defendants Cherry Marine, LLC (“Cherry Marine”) and S&M Leasing, Inc. (“S&M Leasing”), but also that the court defer a determination of the appropriate amount of damages until the time of trial against remaining defendants, and further upon consideration of the court’s order (Doc. 134) dated September 29, 2014, wherein the court granted a request (Doc. 126) by then-counsel to Cherry Marine and S&M Leasing to withdraw as counsel of record for both entities, upon the representation that both entities had discharged counsel, and wherein the court noted that corporate entities cannot proceed *pro se* in federal court, see Lawson v. Nat’l Cont’l-Progressive Ins. Co., 347 F. App’x 741, 742 n.1 (3d Cir. 2009) (nonprecedential) (citing Rowland v. Cali. Men’s Colony, 506 U.S. 194, 201-02 (1993)); see also Falato v. Fotografixusa, LLC, No. 09-5232, 2013 WL

3873260, at *1 (D.N.J. July 25, 2013) (citing Dougherty v. Snyder, 469 F. App'x 71, 72-73 (3d Cir. 2012)); observed that defendant Stephen P. Hrobuchak, Jr. (“Hrobuchak”), the sole principal of both entities, understands and accepts that default judgment may be entered against the unrepresented corporate defendants, (Doc. 134 at 2); and formally admonished that the court may enter default judgment against Cherry Marine and S&M Leasing if substitute counsel does not enter an appearance on their behalf, (id.), and it appearing that substitute counsel has not entered an appearance or otherwise defended on behalf of either entity, and that, at the request (Doc. 144) of Transcontinental, the Clerk of Court entered default (Doc. 145) against Cherry Marine and S&M Leasing on December 10, 2014, see FED. R. CIV. P. 55(a), but it further appearing that, in light of the potential for inconsistent judgments, a court should not enter default judgment against defaulting defendants when claims based upon identical allegations and theories of liability remain for trial against defendants not in default, see Farzetta v. Turner & Newall, Ltd., 797 F.2d 151, 154 (3d Cir. 1986) (quoting Frow v. De La Vega, 82 U.S. 552, 554 (1872)); see also Animal Sci. Prods., Inc. v. China Nat'l Metals & Minerals Imp. & Exp. Corp., 596 F. Supp. 2d 842, 849 (D.N.J. 2008) (collecting cases), and the court concluding that entry of default judgment against corporate entities Cherry Marine and S&M Leasing while identical claims remain pending against Hrobuchak, the principal of both entities, might result in “logically inconsistent determinations as to liability,” Stout St. Funding LLC v. Johnson, 873 F. Supp. 2d 632, 649-50 (E.D. Pa. 2012), and

work “an incongruous result” such that defaulting defendants would “unjustly bear the burden of judgment,” Joe Hand Promotions, Inc. v. Tickle, No. 4:12-CV-1874, 2014 WL 1051821, at *5-7 (M.D. Pa. Mar. 17, 2014) (Brann, J.) (quoting Frow, 82 U.S. at 554), and observing that, according to Transcontinental, a determination of the proper amount of damages must await trial in any event, (see Doc. 193 at 3), such that Transcontinental will not be prejudiced by delay in entry of default judgment, it is hereby ORDERED that:

1. Transcontinental’s motion (Doc. 193) for default judgment against Cherry Marine and S&M Leasing is DENIED without prejudice to reinstatement thereof after all remaining claims have been resolved against the non-defaulting defendants.
2. The entry of default (Doc. 145) against Cherry Marine and S&M Leasing shall remain on the docket.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania