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 Attorneys for Plaintiff  
 7 Gallagher-Kaiser Corporation

8 **UNITED STATES DISTRICT COURT**  
 9 **IN AND FOR THE DISTRICT OF NEVADA**

10 GALLAGHER-KAISER CORPORATION, a  
 Michigan corporation,

CASE NO. : 2:14-cv-00869

11 Plaintiff,

12 vs.

13 LIBERTY DUCT, LLC, a Nevada limited  
 liability company; HARTFORD CASUALTY  
 14 INSURANCE COMPANY, an Indiana  
 insurance corporation; NGM INSURANCE  
 15 COMPANY, a Florida corporation; and DOES  
 1-10 Insurance Company(ies), inclusive,

**STIPULATION AND REQUEST FOR  
 ORDER EXTENDING BRIEFING  
 SCHEDULE TO DEFENDANT NGM  
 INSURANCE COMPANY’S MOTION  
 TO DISMISS FOURTH AMENDED  
 COMPLAINT**

16 Defendants.

(First Request)

17  
 18 Plaintiff, GALLAGHER-KAISER CORPORATION (“GK”), by and through its attorneys  
 19 of record, the law firm of PEEL BRIMLEY LLP, and Defendant, NGM INSURANCE COMPANY  
 20 (“NGM”), by and through its attorneys of record, the law firm of BARRETT & MATURA, P.C.,  
 21 hereby stipulate and agree as follows:

22 **WHEREAS**, GK filed its Fourth Amended Complaint on December 20, 2024 [Doc. 184]  
 23 (“Fourth Amended Complaint”);

24 **WHEREAS**, NGM filed its Motion to Dismiss Fourth Amended Complaint on January 17,  
 25 2024 [Doc. 188] (“Motion”);

26 **WHEREAS**, the original deadline for GK to file its Response Brief (“Response”) to the  
 27 Motion is Wednesday, January 31, 2024;

28 **WHEREAS**, due to scheduling conflicts, GK requested and received from NGM’s counsel

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1 an additional two weeks to file its Response to the Motion;

2 **THEREFORE**, the parties agree and stipulate that GK shall have up to and including  
3 Wednesday, February 14, 2024 to file its Response to the Motion.

4 **IT IS SO STIPULATED.**

5 Dated this 24th day of January, 2024.

6 **PEEL BRIMLEY LLP**

7 */s/ Cary Domina*

8 \_\_\_\_\_  
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15 Telephone: (702) 990-7272  
16 *Attorneys for Gallagher-Kaiser Corporation*

**BARRETT | MATURA**

*/s/ Kevin Barrett*

\_\_\_\_\_

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Las Vegas, Nevada 89128  
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kbarrett@barrettmatura.com  
*Attorney for NGM Insurance Company*

14 **IT IS SO ORDERED.**

15 \_\_\_\_\_  
16   
17 **US District Court Judge**

**From:** [Jennifer Bahling](#)  
**To:** [Cary Domina](#)  
**Cc:** [Kevin Barrett](#); [Holly McGee](#); [Steve Meacham](#)  
**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer  
**Date:** Monday, January 29, 2024 3:53:16 PM  
**Attachments:** [image001.jpg](#)  
[image002.jpg](#)  
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[image005.jpg](#)  
[image006.jpg](#)  
[image007.jpg](#)  
[image008.jpg](#)  
[image009.png](#)

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Hi Cary. You may file.

Thanks,  
Jennifer

---

**From:** Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>  
**Sent:** Monday, January 29, 2024 4:11 PM  
**To:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>  
**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMCGee@barrettmatura.com](mailto:HMCGee@barrettmatura.com)>; Steve Meacham <[smeacham@peelbrimley.com](mailto:smeacham@peelbrimley.com)>  
**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Hi Jennifer:

Please find attached for your review and approval, the draft SOA extending the deadline for GK to file its Response to the Motion to Dismiss. Thank you.

Sincerely,

**Cary B. Domina, Esq.**  
**PARTNER**



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**From:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>

**Sent:** Thursday, January 25, 2024 5:43 PM

**To:** Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>

**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMcGee@barrettmatura.com](mailto:HMcGee@barrettmatura.com)>

**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Cary:

Of course. Go ahead and shoot over a draft stipulation.

Jennifer

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**From:** Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>

**Sent:** Thursday, January 25, 2024 4:46 PM

**To:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>

**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMcGee@barrettmatura.com](mailto:HMcGee@barrettmatura.com)>

**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Jennifer and Kevin:

I show that the Response to NGM's Motion to Dismiss is due Wednesday, January 31<sup>st</sup>. Steve is in Hawaii for the next few weeks. Would it be possible to get a 2-week extension to file the Response, such that it would be due February 14, 2024? We would greatly appreciate it. Thanks.

Sincerely,

**Cary B. Domina, Esq.**  
**PARTNER**



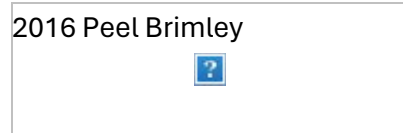
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**From:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>

**Sent:** Tuesday, January 9, 2024 2:37 PM

**To:** Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>; Steve Meacham <[smeacham@peelbrimley.com](mailto:smeacham@peelbrimley.com)>

**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMcGee@barrettmatura.com](mailto:HMcGee@barrettmatura.com)>

**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Attached is a proposed draft. Please let us know if we have your permission to sign and file.

Thank you for your courtesy.

Jennifer

---

**From:** Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>

**Sent:** Tuesday, January 9, 2024 2:45 PM

**To:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>; Steve Meacham

<[smeacham@peelbrimley.com](mailto:smeacham@peelbrimley.com)>

**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMcGee@barrettmatura.com](mailto:HMcGee@barrettmatura.com)>

**Subject:** RE: Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Jennifer/Kevin:

Steve and I believe the issues raised in Kevin's email below were largely raised in the prior Motion to Dismiss and have now been cured by the 4<sup>th</sup> Amended Complaint. Nevertheless, if you want to meet and confer, we are willing to discuss these points with you if you believe such an exercise would be beneficial. If you don't think a meet and confer is beneficial, then we are fine considering this email correspondence as a meet and confer. In any event, we are also fine with your requested extension on the Motion to Dismiss—please prepare a Stip. and Order. Thanks.

Sincerely,

**Cary B. Domina, Esq.**  
**PARTNER**



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---

**From:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>  
**Sent:** Tuesday, January 9, 2024 1:27 PM  
**To:** Steve Meacham <[smeacham@peelbrimley.com](mailto:smeacham@peelbrimley.com)>; Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>  
**Cc:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>; Holly McGee <[HMCGee@barrettmatura.com](mailto:HMCGee@barrettmatura.com)>  
**Subject:** Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Hi guys. I just wanted to follow up on Kevin's email correspondence from last Friday discussing the Motion to Dismiss the Fourth Amended Complaint.

We have not heard back from you and just wanted to make sure you didn't have any questions or comments or wanted to set up a time for further discussion. We need to set forth in the Motion that we have adequately met and conferred before filing the Motion, so just want to double check to make sure we're okay on that.

Further, with the holidays and the craziness of the New Year, it's been a bit hectic. We would appreciate an additional week to finalize and file our Motion. If you are agreeable, we'll shoot over a quick Stipulation and Order so that we can get that on file by tomorrow.

Thanks,  
Jennifer

---

**From:** Kevin Barrett <[kbarrett@barrettmatura.com](mailto:kbarrett@barrettmatura.com)>  
**Sent:** Friday, January 5, 2024 11:42 AM  
**To:** Steve Meacham <[smeacham@peelbrimley.com](mailto:smeacham@peelbrimley.com)>  
**Cc:** Jennifer Bahling <[jbahling@barrettmatura.com](mailto:jbahling@barrettmatura.com)>; Cary Domina <[cdomina@peelbrimley.com](mailto:cdomina@peelbrimley.com)>  
**Subject:** Gallagher-Kaiser v. Liberty Duct - MTD Meet and Confer

Hi Guys,

I hate to bombard you with emails, but this is a separate enough issue that it should be dealt with separately.

As you know, the Court ordered us to respond to the Fourth Amended Complaint on or before January 10. We are in the process of preparing another Motion to Dismiss. Much of it will be along the same lines as our prior Motion and the issues we already have discussed on prior occasions. I think there is still a statute of limitations issue here; but more importantly, our position remains that there is no duty to indemnify (nor can there be a breach of contract, bad faith or any other related claim) because there was never a suit or judgment against GK to

tender to NGM for a defense or indemnity. There was simply an administrative order that obligated GK to make certain repairs to the project. Moreover, the ultimate “tender” letter you refer to in the Complaint, demanding that NGM indemnify GK based on the ODRA decision, was never tendered to NGM until long after the fact. Therefore, even if there were some sort of duty on the part of NGM, it is negated by GK’s own breach of notice, breach of cooperation and breach of the voluntary payments clause. Finally, based on the allegations of the Amended Complaint and the factual information you have now provided, it is clear there is no coverage for this claim in any event. There is no property damage arising out of the work of Liberty Duct but, rather, simply the replacement of its own faulty work. In addition, if there is any damage, it occurred after the NGM policy period expired.

We will therefore be arguing: 1) the claims are time-barred; 2) there was never a legitimate tender or duty to defend or indemnify anything and, therefore, can be no breach; 3) any potential duty or coverage is negated by the late notice, lack of cooperation and voluntary payment; and 4) there is no coverage under the policy for the alleged damages arising out of Liberty’s work.

If you would like to discuss any of these issues further, please let us know and we’ll be happy to set up a time to further meet and confer.

Kevin

**Kevin C. Barrett, Esq.**

<image001.jpg>

Barrett & Matura, P.C.

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