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cc: gthcca

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

TRAVELERS PROPERTY CASUALTY)	Case No. 2:15-cv-05677-PSG-PJW
COMPANY OF AMERICA, a)	
Connecticut corporation;)	[PROPOSED] JUDGMENT AFTER
Plaintiff,)	REMAND FROM THE NINTH
v.)	CIRCUIT COURT OF APPEALS
TAISEI CONSTRUCTION)	
CORPORATION, a Delaware)	
corporation; and DOES 1 through 100)	
inclusive,)	
Defendants.)	Date Action Filed: July 27, 2015
	Trial Date: March 10, 2020

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

It appearing from the files and records in this action that:

1. On December 14, 2015, the Court granted the motion to dismiss filed by TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA (“Travelers”) as to the First Amended Counter Claim filed by TAISEI CONSTRUCTION CORPORATION (“Taisei”);

1 2. On November 22, 2016, the Court granted Travelers' Motion for Partial
2 Summary Judgment adjudicating Travelers' claims for declaratory relief in favor of
3 Travelers and establishing Taisei's liability as to Travelers' claims for breach of
4 contract and equitable reimbursement; and

5 3. On May 15, 2017, with Taisei expressly reserving its right to appeal the
6 substantive elements of the Court's November 22, 2016, Order granting partial
7 summary judgment, Travelers and Taisei filed a stipulation that Travelers' total
8 damages pursuant to its claims for breach of contract and equitable reimbursement
9 amounting to the total sum of \$120,364.59;

10 4. On May 23, 2017, the Court entered judgment in favor of Travelers;

11 5. On June 22, 2017, Taisei filed a notice of appeal;

12 6. On February 8, 2019, the Ninth Circuit issued its Memorandum of
13 Decision affirming the dismissal of Taisei's counterclaims and remanding for further
14 proceedings as to the grant of summary judgment as to Travelers' claim for breach of
15 contract;

16 7. On February 22, 2019, Travelers filed a petition for rehearing seeking
17 clarification as to the Memorandum of Decision that was granted by the Ninth Circuit
18 on April 25, 2019;

19 8. On April 25, 2019, the Ninth Circuit issued its Amended Memorandum
20 of Decision as to the appeal by Taisei (1) affirming the dismissal of Taisei's
21 counterclaims, (2) confirming that the grant of summary judgment in favor of
22 Travelers as to its claim for equitable reimbursement is not disturbed by the ruling on
23 appeal, (3) remanding Travelers' breach of contract cause of action for consideration
24 of the settlement's effect on substantial prejudice, and (4) as for Travelers' claims for
25 declaratory relief, remanding only those that were implicated by the claim for breach
26 of contract;

27 9. On May 17, 2019, the Ninth Circuit issued its Mandate resolving the
28 appeal;

1 10. On June 10, 2019, the District Court reopened this case for further
2 proceedings pursuant to the Mandate of the Ninth Circuit;

3 11. On February 18, 2020, Travelers and Taisei filed a stipulation for
4 dismissal of its breach of contract and equitable reimbursement claims, as well as the
5 entry of this amended judgment;

6 Now, therefore, **IT IS HEREBY ORDERED, ADJUDGED and DECREED**
7 that judgment be entered as follows:

8 1. Counter-Claimant Taisei shall have no recovery against Travelers;

9 2. Travelers' Second Cause of Action for Breach of Contract and Third
10 Cause of Action for Equitable Reimbursement are dismissed with prejudice;

11 3. As to its own duty to defend, Travelers had the right to control the defense
12 of Taisei provided by Travelers under the Valverde Policy in the underlying action of
13 Wilshire Vermont Housing Partners, LP v. Taisei Construction Corp. *et al.*, filed in
14 the Superior Court of California for the County of Los Angeles, Case No. BC504178
15 (Travelers had no right to control the defense provided by other carriers under different
16 policies);

17 4. Taisei at no point had a right to independent counsel funded by Travelers
18 for the defense of Taisei in the underlying action of Wilshire Vermont Housing
19 Partners, LP v. Taisei Construction Corp. *et al.*, Los Angeles Superior Court case No.
20 BC504178;

21 5. Travelers is not obligated to pay for fees and costs incurred through any
22 other counsel after Travelers' appointment of the firm of Lee, Hernandez, Landrum,
23 Garofalo & Blake to defend Taisei in the underlying action of Wilshire Vermont
24 Housing Partners, LP v. Taisei Construction Corp. *et al.*, Los Angeles Superior Court
25 case No. BC504178;


26 6. Travelers' count for declaratory relief seeking a declaration that Taisei
27 breached its duty to cooperate with Travelers by demanding that the firm of Lee,
28 Hernandez, Garofalo & Blake withdraw as Taisei's counsel in the underlying action

1 of Wilshire Vermont Housing Partners, LP v. Taisei Construction Corp., *et al.*, Los
2 Angeles Superior Court case No. BC504178, is dismissed with prejudice;

3 7. Each party is to bear its own costs in this action.
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5 **IT IS SO ORDERED, ADJUDGED AND DECREED.**
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8 Dated: 2/19/2020

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10 Hon. Philip S. Gutierrez,
11 United States District Judge
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