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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EVEREST NATIONAL INSURANCE  
COMPANY,

Plaintiff,

v.

VALLEY FLOORING SPECIALTIES,  
INC.,

Defendant.

\_\_\_\_\_  
VALLEY FLOORING SPECIALTIES,  
INC.,

Counterclaimant,

v.

EVEREST NATIONAL INSURANCE  
COMPANY,

Counterdefendant.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CASE NO. CV F 08-1695 LJO GSA

**SCHEDULING CONFERENCE ORDER**

Expert  
Disclosure: September 30, 2009

Supplemental  
Expert Disclosure: October 20, 2009

Nonexpert  
Discovery Cutoff: September 30, 2009

Expert  
Discovery Cutoff: November 15, 2009

Pretrial  
Motion Filing  
Deadline: November 30, 2009

Pretrial Motion  
Hearing Deadline: January 28, 2010

Settlement Conf.: None set.

Pretrial Conf.: Date: February 12, 2010  
Time: 8:30 a.m.  
Dept.: 4 (LJO)

Court Trial: Date: April 5, 2010  
(3-4 day est.) Time: 9 a.m.  
Dept.: 4 (LJO)

This Court conducted a February 17, 2009, scheduling conference. Plaintiff and Counterdefendant Everest National Insurance Company personally appeared by counsel Thy B. Bui. Defendant and Counterclaimant Valley Flooring Specialists, Inc., personally appeared by Donald R. Forbes. Pursuant to F.R.Civ.P. 16(b), this Court sets a schedule for this action.

1 **1. Amendment To The Parties' Pleadings**

2 The parties propose no further amendment to their respective pleadings.

3 **2. Consent To Magistrate Judge**

4 All parties do not consent to the conduct of further proceedings, including trial and entry of  
5 judgment, by a United States Magistrate Judge. Due to this Court's heavy caseload and its effect to hold  
6 to scheduled dates, the parties are encouraged to consent to the conduct of further proceedings by a  
7 United States Magistrate Judge.

8 **3. F.R.Civ.P. 26(a)(1) Initial Disclosures**

9 The parties served their respective F.R.Civ.P. 26(a)(1) initial disclosures on February 9, 2009.

10 **4. Expert Witnesses**

11 Initial expert witness disclosures by any party shall be served no later than **September 30, 2009**.  
12 Supplemental expert witness disclosures by any party shall be served no later than **October 20, 2009**.  
13 Such disclosures must be made pursuant to F.R.Civ.P. 26(a)(2)(A) and (B) and shall include all  
14 information required thereunder. In addition, F.R.Civ.P. 26(b)(4) and F.R.Civ.P. 26(e) shall specifically  
15 apply to all discovery relating to expert witnesses and their opinions. Each expert witness must be  
16 prepared fully to be examined on all subjects and opinions included in the designations. Failure to  
17 comply with these requirements will result in the imposition of appropriate sanctions, which may include  
18 the preclusion of testimony or other evidence offered through the expert witness. In particular, this  
19 Court will enforce preclusion of testimony or other evidence if F.R.Civ.P. 26(e) is not strictly complied  
20 with.

21 **5. Discovery Cutoffs And Limits**

22 All nonexpert discovery and related discovery motions (including motions to compel) shall be  
23 completed or heard no later than **September 30, 2009**. All expert discovery and related discovery  
24 motions (including motions to compel) shall be completed or heard no later than **November 15, 2009**.

25 **6. Pretrial Motion Schedule**

26 All pretrial motions, both dispositive and nondispositive (except discovery motions addressed  
27 above), shall be served and filed no later than **November 30, 2009**. All pretrial dispositive and  
28

1 nondispositive motions (except discovery motions addressed above) shall be set before the appropriate  
2 judge for a hearing to be conducted no later than **January 28, 2010**.

3 At the pretrial conference, the Court will set filing and hearing dates for motions in limine.

4 **7. Mandatory Settlement Conference**

5 At this time, this Court sets no settlement conference. If the parties later desire a settlement  
6 conference, they may jointly request one by contacting the chambers of the United States Magistrate  
7 Judge assigned to this action.

8 If a settlement conference is set and unless otherwise permitted in advance by the Court, the  
9 attorneys who will try the case shall appear at the settlement conference with the parties and the person  
10 or persons having full authority to negotiate and settle the case, on any terms, at the conference.

11 **No later than seven days prior to the settlement conference**, each party shall submit directly  
12 to the settlement conference judge's chambers a confidential settlement conference statement. This  
13 statement should neither be filed with the clerk of the Court nor served on any other party. Each  
14 statement shall be clearly marked "CONFIDENTIAL" with the date and time of the mandatory  
15 settlement conference indicated prominently. Counsel are urged to request the return of their statements.  
16 If such request is not made, the Court will dispose of the statement.

17 The confidential settlement conference statement shall include the following:

- 18 A. A brief statement of the facts of the case;
- 19 B. A brief statement of the claims and defenses (i.e., statutory or other grounds upon which  
20 the claims or defenses are based), a forthright evaluation of the parties' likelihood of prevailing on the  
21 claims and defenses, and a description of the major issues in dispute;
- 22 C. A summary of the proceedings to date;
- 23 D. An estimate of the cost and time to be expended for further pretrial and trial matters,  
24 including discovery;
- 25 E. The relief sought; and
- 26 F. The party's position on settlement, **including the amount which or otherwise what the**  
27 **party will accept to settle, realistic settlement expectations**, present demands and offers, and a history  
28 of past settlement discussions, offers, and demands.

1 This Court will vacate the settlement conference if the Court finds the settlement conference will  
2 be neither productive nor meaningful to attempt to resolve all or part of this case. As far in advance of  
3 the settlement conference as possible, a party shall inform the Court and other parties that it believes the  
4 case is not in a settlement posture so the Court may vacate or reset the settlement conference. Otherwise  
5 the parties shall proceed with the settlement conference in good faith to attempt to resolve all or part of  
6 the case.

7 **8. Pretrial Conference**

8 This Court sets a pretrial conference for **February 12, 2010, at 8:30 a.m.** in Department 4 (LJO)  
9 of this Court. The parties are directed to file a joint pretrial statement which complies with the  
10 requirements of this Court's Local Rule 16-281. In addition, the joint pretrial statement should include  
11 a brief factual summary and an agreed upon neutral statement of the case. An additional copy of the  
12 joint pretrial statement, carefully prepared and executed by all counsel, shall be electronically filed in  
13 CM/ECF and shall be e-mailed in WordPerfect format to [ljoorders@caed.uscourts.gov](mailto:ljoorders@caed.uscourts.gov).

14 The parties' attention is directed to this Court's Local Rules 16-281 and 16-282. This Court will  
15 insist upon strict compliance with those rules.

16 At the pretrial conference, the Court will set deadlines, among others, to file motions in limine,  
17 final witness lists, exhibits, jury instructions, objections, and other trial documents.

18 **9. Trial Date**

19 A three to four day court trial is set for **April 5, 2010, at 9 a.m.** in Department 4 (LJO) of this  
20 Court.

21 At this time, the parties request no bifurcation of issues.

22 **10. Effect Of This Order**

23 This order represents the best estimate of the Court and parties as to the agenda most suitable to  
24 dispose of this case. If the parties determine at any time that the schedule outlined in this order cannot  
25 be met, the parties are ordered to notify the Court immediately of that fact so that adjustments may be  
26 made, either by stipulation or by subsequent status conference. Stipulations extending the deadlines  
27 contained herein will not be considered unless they are accompanied by affidavits or declarations with  
28 attached exhibits, where appropriate, which establish good cause for granting the relief requested.

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Failure to comply with this order shall result in the imposition of sanctions.

**IT IS SO ORDERED.**

**Dated: February 17, 2009**

**/s/ Gary S. Austin**  
**UNITED STATES MAGISTRATE JUDGE**