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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION
10

11 ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,

12 Plaintiff,

13 KINSALE INSURANCE COMPANY,

14 Defendant.
15

16 NEW YORK MARINE AND
17 GENERAL INSURANCE COMPANY,
18 a Delaware corporation,

19 Plaintiff,
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21 v.

22 KINSALE INSURANCE COMPANY,
an Arkansas corporation,

23 Defendant.
24

25 TRC OPERATING COMPANY, INC.,
a California corporation, TRC
26 CYPRESS GROUP, LLC, a California
Limited Liability Company,

27 Real Parties in Interest.
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Case No. 1:20-cv-00967-JLT-BAK
(BAM)

Consolidated With Case No. 1:20-cv-
01085-NONE-JLT

**EX PARTE APPLICATION TO
EXTEND TIME TO FILE JOINT
STATUS REPORT;
DECLARATION OF MATTHEW J.
HAFEY; DECLARATION OF
JAMES P. WAGONER; ORDER**

Hon. Jennifer L. Thurston

Complaint Filed: August 5, 2020
Trial Date: None

1 Pursuant to the Court’s November 12, 2021 Order (Doc. 24), the Parties are
2 required to file a Joint Status Report within 120 days from the date of that Order,
3 which is March 12, 2022. New York Marine and General Insurance Company (“New
4 York Marine”) hereby requests, ex parte, that the March 12, 2022 deadline to file the
5 Joint Status Report be extended to March 25, 2022 due to counsel of record for
6 Kinsale Insurance Company (“Kinsale”) recent switch of law firms and inability to
7 obtain a Substitution of Attorneys in time to file the Joint Status Report by March 12,
8 2022. This Ex Parte Application is unopposed.

9 On February 21, 2022, Matthew J. Hafey, counsel of record for Kinsale,
10 switched law firms from Nemecek & Cole to Nicolaidis, Fink, Thorpe, Michaelides,
11 Sullivan LLP (“Nicolaidis”). Hafey Decl., ¶ 2. Ms. Berube, the other attorney at
12 Nemecek & Cole who is of record in this action, is no longer with the firm. *Id.* There
13 are no other attorneys at Nemecek & Cole who are familiar with this file. *Id.* Mr.
14 Hafey has not yet obtained a substitution of attorney from Kinsale as its lead counsel
15 in this action. Hafey Decl., ¶ 3. A final decision as to whether Mr. Hafey will remain
16 counsel of record is expected to be made in the next ten days. *Id.* As a result, Mr.
17 Hafey has been unable to “meet and confer” with counsel for New York Marine, St.
18 Paul Fire and Marine Insurance Company (“St. Paul”), TRC Operating Company, Inc.
19 and TRC Cypress Group, LLP (collectively “TRC”) regarding the contents of that
20 Joint Status Report in time for that Report to be filed by March 12, 2022 pursuant to
21 the Court’s November 12, 2021 Order (Doc. 24). Hafey Decl., ¶ 4. Mr. Hafey
22 anticipates that he will be available to “meet and confer” with counsel for the other
23 parties within the next ten days such that the parties will be in a position to file the
24 Joint Status Report by March 25, 2022. Hafey Decl., ¶ 5.

25 In light of counsel for Kinsale being unavailable to “meet and confer” regarding
26 the contents of the Joint Status Report to be filed by the parties, New York Marine
27 requests an extension from March 12, 2022 to March 25, 2022 to file the Joint Status
28 Report pursuant to the Court’s November 12, 2021 Order (Doc. 24). No parties

1 oppose this Ex Parte Application. Wagoner Decl., ¶ 4.

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Dated: March 10, 2022

MCCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By: /s/ James P. Wagoner
James P. Wagoner
Kevin D. Hansen
Brandon M. Fish
Attorneys for Plaintiff New York Marine and
General Insurance Company

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DECLARATION OF MATTHEW J. HAFEY

I, Matthew J. Hafey, declare as follows:

1. I am a partner with the law firm Nicolaides, Fink, Thorpe, Michaelides, Sullivan LLP (“Nicolaides”). I am a member in good standing of the State Bar of California, and am admitted to the practice before the above-entitled Court. The following facts are based upon my personal knowledge. If called as a witness I could and would testify competently to these facts under oath.

2. Until February 18, 2022, I was a member of the law firm of Nemecek & Cole which is counsel of record for defendant Kinsale Insurance Company (“Kinsale”). While at Nemecek & Cole, I was lead counsel for Kinsale in this action. My associate, Bevin Berube, was also counsel of record. Ms. Berube left the firm in 2021. There are no other attorneys at Nemecek & Cole who are familiar with this file at this time.

3. I have not yet obtained a Substitution of Attorney replacing Nemecek & Cole with the Nicolaides firm as counsel of record in this matter. I expect that a decision will be made in the next ten days whether Kinsale will retain the Nicolaides firm or other counsel and that a Substitution of Attorney will be filed within that time.

4. As a result, I have been unable to “meet and confer” with counsel for New York Marine and General Insurance Company, St. Paul Fire and Marine Insurance Company, TRC Operating Company, Inc. and TRC Cypress Group, LLP regarding the contents of that Joint Status Report in time for that Report to be filed by March 12, 2022 pursuant to the Court’s November 12, 2021 Order (Doc. 24).

5. I anticipate that an executed Substitution of Attorney for Kinsale will be filed within the next ten days thereby allowing me nor another attorney to “meet and confer” regarding the contents of that Joint Status Report, such that it can be filed by Friday, March 25, 2022.

I declare under penalty of perjury under that the foregoing is true and correct.

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This this Declaration was executed by me on March 10, 2022 at Sherman Oaks,
California.

/s/ Matthew J. Hafey (as approved 3/10/22)
Matthew J. Hafey

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DECLARATION OF JAMES P. WAGONER

I, James P. Wagoner, declare as follows:

1. I am a member of the law firm McCormick, Barstow, Sheppard, Wayte & Carruth LLP, counsel herein for Plaintiff New York Marine and General Insurance Company (“New York Marine”). I am a member in good standing of the State Bar of California, and am admitted to the practice before the above-entitled Court. The following facts are based upon my personal knowledge. If called as a witness I could and would testify competently to these facts under oath.

2. By Order dated November 12, 2021 (Doc. 24), the Court stayed this action and ordered the parties to file a Joint Status Report within 120 days from the date of the Order, which is March 12, 2022.

3. On March 9, 2022, I received an email from Matthew Hafey advising that he is unable to “meet and confer” regarding the contents of the Joint Status Report because he had been unable to obtain an executed Substitution of Attorney from his old firm, Nemecek & Cole. Mr. Hafey advised that he believes that he will have the executed Substitution of Attorney within the next ten days and that he or another attorney will be in a position to “meet and confer” regarding the Joint Status Report in time to have it filed by March 25, 2022.

4. By emails dated March 10, 2022, counsel for St. Paul Fire and Marine Insurance Company, TRC Operating Company, Inc. and TRC Cypress Group, LLP advised that they do not oppose this Ex Parte Application.

I declare under penalty of perjury under that the foregoing is true and correct. This this Declaration was executed by me on March 10, 2022 in Fresno, California.

/s/ James P. Wagoner
James P. Wagoner

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ORDER

The Court, having reviewed the Ex Parte Application to Extend Time to File Joint Status Report and the Supporting Declarations of Matthew J. Hafey and James P. Wagoner, and good cause showing, HEREBY ORDERS as follows:

1. The time for the Parties to file their Joint Status Report pursuant to the November 12, 2021 Order is extended from March 12, 2022 to March 25, 2022.

IT IS SO ORDERED.

Dated: March 14, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE