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 12 ALLIED PROPERTY AND CASUALTY  
 13 INSURANCE COMPANY

14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA  
 16 SACRAMENTO DIVISION

17 NATIONAL UNION FIRE INSURANCE  
 18 COMPANY OF PITTSBURGH, PA, a  
 19 Pennsylvania corporation,

20 Plaintiff,

21 vs.

22 ALLIED PROPERTY AND CASUALTY  
 23 INSURANCE COMPANY, an Iowa  
 24 corporation,

25 Defendant.

CASE No. 2:12-CV-01380-MCE- KJN

**STIPULATION AND ORDER  
 DISMISSING WITH PREJUDICE  
 PLAINTIFF'S CLAIMS FOR RELIEF  
 UNDER THE ALLIED PERSONAL  
 UMBRELLA POLICY ONLY**

**[FRCP 41(A)(1)]**

Courtroom: 7  
 Judge: Hon. Morrison C. England, Jr.

Complaint Filed: May 22, 2012  
 Trial Date: April 14, 2014

1           WHEREAS:

2           1.       This is a liability insurance coverage dispute between insurers that relates to  
3 coverage for a lawsuit known as Foster, et al. v. Brewer Refrigeration Heating & Air  
4 Conditioning, Inc., et al., Superior Court of the State of California for Nevada County, Case No.  
5 77173 brought by Michael and Susan Foster against Robert Brewer and Brewer Refrigeration  
6 Heating & Air Conditioning, Inc. (“**Foster** action” or “**Foster** lawsuit”). The **Foster** action  
7 alleged that on the evening of May 2, 2010, the Fosters were passengers in a 2006 Porsche  
8 Cayenne (“Porsche”) driven by Robert Brewer at an unsafe speed when the vehicle crashed,  
9 resulting in injuries to the Fosters.

10          2.       The **Foster** action was settled. The settlement was funded by Nationwide Mutual  
11 Insurance Company who had issued a business auto policy that covered Robert Brewer and  
12 Brewer Refrigeration Heating & Air Conditioning, Inc. (“Brewer Corporation”) and National  
13 Union, plaintiff herein, who had issued a commercial excess policy that also covered Robert  
14 Brewer and Brewer Corporation.

15          3.       Nationwide paid its \$1,000,000 policy limit to settle the **Foster** action. National  
16 Union contributed \$900,000 toward the settlement of the **Foster** action, which settled for a total  
17 of \$1,900,000.

18          4.       After the settlement, National Union filed this suit seeking to recover the amount it  
19 paid towards settlement under two policies issued by Allied Property & Casualty Insurance  
20 Company to Robert and Cheryle Brewer: (1) a personal auto policy, policy number PPC  
21 0010119244-0 (“Allied personal auto policy”); and (2) a personal umbrella liability policy, policy  
22 number PEC 7823101988 (“Allied personal umbrella policy”). National Union’s complaint  
23 alleges claims for declaratory relief, equitable contribution, equitable indemnity, and equitable  
24 subrogation under both Allied policies.

25          5.       On or about October 3, 2013, Allied filed a motion for summary adjudication  
26 concerning the issue of coverage for the **Foster** lawsuit under the Allied personal umbrella policy  
27 only. [Dkt. No. 39]. That motion sought a declaration that Allied had no obligation to reimburse  
28 National Union for any portion of the settlement in the **Foster** lawsuit under the Allied personal

1 umbrella policy.

2           6.       Since the filing of the above motion [Dkt. No. 39], the parties have reached a  
3 stipulation that would render Allied's pending motion on the personal umbrella policy only, moot  
4 as follows:

5           WHEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE:

- 6           (a) National Union agrees to immediately dismiss with prejudice  
7 pursuant to Fed.R.Civ.Pro. 41(a)(1), all claims alleged against  
8 Allied in this lawsuit for contribution, indemnity, subrogation or  
9 otherwise, under the Allied personal umbrella policy only and  
10 stipulates that Allied is not obligated to reimburse National Union  
11 for any sums paid to settle the **Foster** lawsuit under the Allied  
12 personal umbrella policy only;
- 13           (b) Allied agrees to waive any right it may have to seek fees and costs  
14 it incurred for defending against National Union's claim that  
15 coverage existed for the **Foster** lawsuit under Allied's personal  
16 umbrella policy;
- 17           (c) Upon the Court signing this stipulation and proposed order, Allied's  
18 pending summary adjudication motion on the personal umbrella  
19 policy [Dkt. No. 39] shall be withdrawn as moot;
- 20           (d) That National Union continues to contend, and Allied continues to  
21 dispute, that coverage exists for the settlement payment made by  
22 National Union under the Allied personal auto policy and that  
23 National Union is not dismissing any of its claims for declaratory  
24 relief, contribution, indemnity, or subrogation under the Allied  
25 personal auto policy but has only withdrawn its claims as to the  
26 Allied personal umbrella policy; rather, the parties have and will be  
27 filing motions for summary adjudication with respect to the Allied  
28 personal auto policy;
- (e) The parties shall bear their own fees and costs as to the claims  
dismissed in this stipulation and order only; and
- (f) Nothing in this stipulation and order shall bar the parties from  
seeking or recovering costs associated with any of the claims not  
dismissed in this stipulation and proposed order.
- (g) That Allied's personal auto policy \$1 million occurrence limit has  
not been impaired in any regard.

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1 **SO STIPULATED**

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3 Dated: October \_\_\_\_, 2013

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

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By: \_\_\_\_\_

Patrick Fredette  
Jay A. Christofferson  
Attorneys for Plaintiff  
National Union Fire Insurance Company of  
Pittsburgh, PA.

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9 Dated: October \_\_\_\_, 2013

MECKLER BULGER TILSON MARICK &  
PEARSON LLP

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11

By: \_\_\_\_\_

Karen L. Uno  
Attorneys for Defendant  
Allied Property and Casualty Insurance Company

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16 **BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING:**

- 17 1. All of National Union's claims alleged against Allied in this lawsuit, for  
18 declaratory relief, contribution, indemnity, subrogation or otherwise under the  
Allied personal umbrella policy only, are dismissed with prejudice pursuant to  
Fed.R.Civ.Pro. 41(a)(1).
- 19 2. The parties shall bear their own fees and costs as to the claims dismissed in  
20 this order only.
- 21 3. Allied's pending motion for summary adjudication on the personal umbrella  
policy [Dkt. No. 39] is hereby dismissed as MOOT.

22 **IT IS SO ORDERED.**

23 Date: October 23, 2013

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 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
 UNITED STATES DISTRICT COURT

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