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Patrick M. Howe (SBN 154669)
pat@patrickhowelaw.com
402 W. Broadway, Suite 1025
San Diego, CA 92101
(619) 398-3422 Phone
(619) 452-2507 Fax

Attorney for plaintiff/cross-defendant
United Financial Casualty Company

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

United Financial Casualty Company;
Plaintiff,

v.

Black Diamond Asphalt, Inc.; Polar
Corporation; Polar Tank Trailer
LLC; The Reed Leasing Group
LLC; Raymond Myers; Desiree
Myers; and Kinsale Insurance
Company;

Defendants.

Black Diamond Asphalt, Inc.;

Cross-Claimant,

v.

United Financial Casualty Company;
and Kinsale Insurance Company;

Cross-Defendants.

Case No. 2:15-cv-02669-MCE-EFB

**Stipulation to Continue Filing of
Joint Status Report; Order
Thereon**

1 **Recitals**

2 This is an insurance coverage matter. It arises out of a pending state court
3 injury lawsuit in Sacramento Superior Court filed by Raymond Myers and
4 Desiree Myers. Mr. Myers claims he was injured when he fell off a trailer
5 allegedly manufactured or distributed by the defendants in the injury lawsuit.

6 There are two affirmative pleadings in this case. Plaintiff/cross-defendant
7 United Financial Casualty Company (“UFCC”) filed a complaint on
8 December 24, 2015 (Dkt. 1). In the complaint, UFCC alleges causes of
9 action for declaratory relief and damages in the form of reimbursement of
10 defense costs in connection with its defense of its policyholder,
11 defendant/cross claimant Black Diamond Asphalt, Inc. (“Black Diamond”).
12 Each of the other defendants named in UFCC’s complaint is a party to the
13 pending state court injury lawsuit or a purported liability insurer of one or
14 more of the defendants. UFCC included these as defendants to ensure that
15 any judgment reached in this case is binding on each of the defendants. On
16 February 16, 2016, Black Diamond filed a cross-claim against UFCC and
17 defendant/cross-defendant Kinsale Insurance Company (“Kinsale”) (Dkt. 8).
18 Black Diamond alleges a cause of action of insurance bad faith against
19 UFCC, causes of action for breach of contract and bad faith against Kinsale,
20 and a cause of action for declaratory relief against UFCC and Kinsale.

21 The crux of this lawsuit on UFCC’s complaint and Black Diamond’s
22 cross-claim is whether UFCC and/or Kinsale is obligated to defend or
23 indemnify Black Diamond against the claims in the state court injury lawsuit
24 under their respective insurance policies. That issue, and any potential
25 damages flowing therefrom, has now been affected in part because Black
26 Diamond has now been dismissed as a defendant in the state court injury
27 action. The dismissal was filed by claimants’ counsel in the injury action and
28 submitted to the state court on or about March 21, 2016.

1 In light of the dismissal of Black Diamond in the state court injury action,
2 UFCC, on March 23, 2016, filed a voluntary dismissal in this case pursuant
3 to FRCP 41(a)(1) dismissing defendants The Reed Leasing Group LLC,
4 Raymond Myers and Desiree Myers, who had not filed answers to the
5 complaint or motions for summary judgment.

6 In light of the dismissal of Black Diamond in the state court injury action,
7 UFCC and defendants Polar Corporation and Polar Tank Trailer LLC will be
8 filing a joint motion/stipulation to dismiss the complaint, without prejudice,
9 against such defendants.

10 As a result of these actions, the remaining parties in this case will be
11 UFCC, Black Diamond and Kinsale. The remaining parties are exploring a
12 global resolution whereby both the complaint and Black Diamond's cross-
13 claim would be dismissed, with prejudice. Black Diamond's counsel has
14 advised that she does not have authority to agree to the proposed resolution
15 at this time.

16 Under the current status, the parties who have appeared in the case were
17 to prepare and submit a joint status report to the court by March 25, 2016.
18 Given the recent events and streamlining of this case, and the potential
19 resolution of the case within the next few weeks, UFCC, Black Diamond
20 and Kinsale agree they do not wish to incur the time and expense to prepare
21 the joint status report at this time if they will achieve the global resolution
22 imminently.

23 **Request for Continuance**

24 Accordingly, the parties who have appeared in this action to date hereby
25 stipulate to and request an order continuing the deadline to file a joint status
26 report by no later than May 13, 2016.

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March 29, 2016

Respectfully submitted,

By: /s/ **Patrick M. Howe**
Patrick M. Howe
Attorney for plaintiff/cross-defendant
United Financial Casualty Company
pat@patrickhowelaw.com

March 29, 2016

Anderson & Poole, P.C.

By: /s/ **Deborah L. Goodman**
Deborah L. Goodman
Attorneys for defendant/cross-
claimant Black Diamond
Asphalt, Inc.
dgoodman@adplaw.com

(Signature authorized on 3/25/16)

March 29, 2016

Lewis Brisbois Bisgaard & Smith
LLP

By: /s/ **William F. Horsey**
William F. Horsey
Attorneys for defendants Polar
Corporation and Polar Tank Trailer
LLC
william.horsey@lewisbrisbois.com

(Signature authorized on 3/25/16)

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March 29, 2016

Selvin Wraith Halman LLP

By: /s/ Susan F. Halman

Susan F. Halman

Attorneys for defendant/cross-
defendant Kinsale Insurance
Company

shalman@selvinwraith.com


(Signature authorized on 3/25/16)

Order

Based on the stipulation of the parties, and good cause appearing, the court orders that the current deadline to file a joint status report is continued to May 13, 2016. The parties are to meet and confer and file the report by no later than May 13, 2016. All other provisions of the court's December 24, 2015 Order Requiring Joint Status Report (Dkt. 3) remain in force.

IT IS SO ORDERED.

Dated: March 29, 2016



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