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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 NATIONAL UNION FIRE INSURANCE
12 COMPANY OF PITTSBURGH, PA;
13 AMERICAN INTERNATIONAL
14 UNDERWRITERS INSURANCE
15 COMPANY, AND AMERICAN
16 INTERNATIONAL SPECIALTY LINES
17 INSURANCE COMPANY,

18 Plaintiffs,

19 v.

20 SEAGATE TECHNOLOGY, INC.

21 Defendant.

22 SEAGATE TECHNOLOGY LLC,

23 Counterclaimant,

24 v.

25 NATIONAL UNION FIRE INSURANCE
26 COMPANY OF PITTSBURGH, PA;
27 AMERICAN INTERNATIONAL
28 UNDERWRITERS INSURANCE
COMPANY, AND AMERICAN
INTERNATIONAL SPECILTY LINES
INSURANCE COMPANY,

Counterclaim Defendants.

Case No. C 04-01593 WHA

**STIPULATION AND [~~PROPOSED~~]
ORDER COMPELLING ARBITRATION
OF REMAINING DISPUTES AND
ENTERING JUDGMENT**

The Honorable William H. Alsup

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1 interest on such defense costs incurred between September 18, 2003 September 22, 2005; (iv) that
2 there is a genuine issue of material fact regarding whether National Union was participating in
3 Seagate's defense between September 22, 2005 and August 21, 2007; (v) that National Union is
4 not liable for breach of contract after July 18, 2007; (vi) that National Union and Seagate are
5 required to arbitrate any and all disputes about the amount of defense costs National Union is
6 obligated to pay pursuant to its adjudicated duty to defend after July 18, 2007 pursuant to
7 California Civil Code § 2860(c); and

8 **WHEREAS**, National Union and Seagate agree to arbitrate questions regarding the
9 amounts owed by National Union pursuant to their adjudicated duty to defend Seagate in the
10 Convolv case and whether National Union was participating in Seagate's defense between
11 September 22, 2005 and August 21, 2007;

12 **WHEREAS**, National Union and Seagate agree to arbitrate the reasonableness of the
13 defense fees and costs incurred by Seagate in the Convolv case from November 1, 2000 through
14 the present;

15 **NOW THEREFORE**, pursuant to Civil L.R. 7-12, it is hereby **STIPULATED AND**
16 **AGREED** by and among the parties as follows:

- 17 1. The Court shall vacate the Final Pretrial Conference scheduled for August 5, 2013
18 at 2:00 p.m., and the Trial scheduled for August 19, 2013 at 7:30 a.m.
- 19 2. The parties will resolve in binding arbitration the question whether National Union
20 was participating in Seagate's defense between September 22, 2005 and August
21 21, 2007.
- 22 3. The arbitration will resolve the following remaining disputed issues:
 - 23 a. Whether National Union participated in Seagate's defense between
24 September 22, 2005 and August 21, 2007; and if National Union did not
25 participate in Seagate's defense during that time, the amount of defense
26 costs, minus a deduction for AIU's contribution, and prejudgment interest
27 on such defense costs Seagate incurred between September 22, 2005 and
28 August 21, 2007;

- 1 b. Pursuant to California Civil Code Section 2860(c), what the appropriate
2 billing rates are for Seagate's defense counsel in the Convolv case after
3 September 22, 2005 or August 21, 2007 (depending on the outcome of the
4 first issue identified above) ;
- 5 c. Whether Seagate's defense fees and costs incurred in the Convolv case are
6 reasonable;
- 7 i. Seagate's defense costs incurred before September 22, 2005 or
8 August 21, 2007 (depending on the outcome of the first issue
9 identified above) are presumed reasonable and National Union shall
10 bear the burden of proof that Seagate's defense costs were
11 unreasonable; and
- 12 ii. After September 22, 2005 or August 21, 2007 (depending on the
13 outcome of the first issue identified above), Seagate shall bear the
14 burden of proof that Seagate's defense costs were reasonable.
- 15 iii. The question of reasonableness is separate from the rate issues
16 governed by California Civil Code § 2860.
- 17 d. The amount of prejudgment interest owed on defense costs Seagate
18 incurred between November 1, 2000 and September 18, 2003;
- 19 e. The amount of defense costs, minus a deduction for AIU's contribution,
20 and prejudgment interest on such defense costs Seagate incurred between
21 September 18, 2003 and September 22, 2005;
- 22 f. Whether National Union has reimbursed Seagate for all amounts owed
23 pursuant to its duty to defend; and
- 24 g. Whether, and if so, how much, prejudgment interest is owed on amounts
25 not already paid to Seagate by National Union.
- 26 4. The Parties agree to utilize JAMS as the arbitration forum and the JAMS
27 Comprehensive Arbitration Rules & Procedures shall govern the arbitration.
- 28 5. The Parties agree to utilize three (3) neutral arbitrators for purposes of conducting

1 the arbitration.

2 6. Judgment may be entered on Seagate's First Counterclaim for Relief for Breach of
3 Contract in accord with the Court's prior orders and rulings (Dkt. Nos. 396 & 430)
4 arising out of or related in any way to such Counterclaim.

5 7. This stipulation for an order compelling arbitration of remaining disputes and
6 entering judgment does not alter, eliminate, or otherwise affect any party's right to
7 appeal any part of the Judgment entered pursuant hereto and/or any of the Court's
8 orders and rulings arising out of or related in any way to Seagate's Breach of
9 Contract Counterclaim. All appellate rights are specifically preserved.
10

11 **IT IS SO STIPULATED.**

12 Dated: July 29, 2013

Respectfully submitted,

13 FREITAS TSENG & KAUFMAN LLP

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15
16 /s/ Daniel J. Weinberg /s/

Daniel J. Weinberg

Attorneys for Defendant and Counterclaimant
SEAGATE TECHNOLOGY LLC

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19 Dated: July 29, 2013

PATTON BOGGS LLP

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21 /s/ Mark D. Sheridan /s/

Mark D. Sheridan

Attorneys for Plaintiffs and Counterclaim
Defendants NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURGH, PA and AMERICAN
INTERNATIONAL UNDERWRITERS
INSURANCE COMPANY

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25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 Dated: August 5, 2013.

27 
William Alsup

United States District Judge