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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNIONAMERICA INSURANCE CO., )  
LIMITED, Successor-in- )  
interest to ST. PAUL )  
REINSURANCE, )  
Plaintiff(s), )  
v. )  
THE FORT MILLER GROUP, INC., )  
THE FORT MILLER CO. and )  
BEECHE SYSTEMS CORP., )  
Defendant(s). )  
\_\_\_\_\_ )

No. C05-1912 BZ

**ORDER FOR FURTHER BRIEFING**

**IT IS HEREBY ORDERED** that the hearing on counterdefendant's motion to dismiss the first amended counterclaim is continued to **October 29, 2008 at 10:00 a.m.**

**IT IS FURTHER ORDERED** that by no later than **September 29, 2008**, counterdefendant shall file a brief addressing at least the following specific issues:

1. If the court rules that the underlying policy was rescinded, would the insureds still be able to bring a claim for bad faith?

2. If the court finds that the policy was not rescinded, would the insureds be able to bring a claim for

1 bad faith?

2 3. Would the answers to questions 1. and 2. be  
3 different if the insurer, who provided a defense and paid  
4 benefits, filed the rescission action in such a fashion as to  
5 impede the insured's ability to defend the underlying claims?

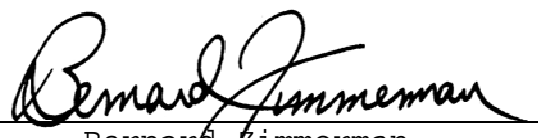
6 4. Assuming that the insureds can maintain their bad  
7 faith counterclaim, what damages may they claim?

8 5. Would the public policy of encouraging insurers to  
9 comply with their insurance obligations be advanced if an  
10 insurer could be subject to a claim based solely on the  
11 grounds that it filed an unsuccessful rescission action in  
12 bad faith?

13 **IT IS FURTHER ORDERED** that counterclaimant shall file an  
14 opposition by no later than **October 10, 2008**. There will be  
15 no further briefing unless specifically ordered by the court.  
16 All briefs shall be submitted in WordPerfect format on  
17 diskette or may be e-mailed to the following address:  
18 bzpo@cand.uscourts.gov

19 The parties are reminded to carefully heed the  
20 admonitions given by the court as to the focus of their  
21 briefs.

22 Dated: September 18, 2008

23   
24 Bernard Zimmerman  
United States Magistrate Judge