

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**AMENDED ORDER STAYING  
COUNTERCLAIM AND DENYING  
REQUEST FOR SANCTIONS**  
(Corrects tentative date  
of Jury Trial)

Following the supplemental hearing held on October 29,  
2008, Unionamerica's 12(b)(6) motion to dismiss Fort Miller's  
counterclaim is taken under submission.<sup>1</sup> **IT IS FURTHER**

**ORDERED AS FOLLOWS:**

1. Should the motion be denied, for purposes of trial,  
the counterclaim will be severed from the rescission claim.  
The trial scheduled to commence February 23, 2009 will be  
limited to Unionamerica's claims and Fort Miller's answer and

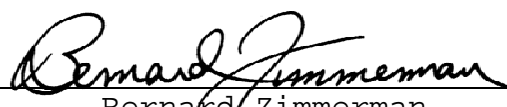
\_\_\_\_\_

<sup>1</sup> Unionamerica's motion for sanctions is **DENIED** for the  
reason expressed at the September hearing. Unionamerica's  
objections to Fort Miller's appendix filed in support of its  
supplemental brief are **DENIED**.

1 its affirmative defenses. If the policy is rescinded, the  
2 counterclaim will be dismissed. If not, the court will  
3 schedule a trial on the counterclaim. I have tentatively  
4 reserved the date of **September 21, 2009** for a one week jury  
5 trial.

6 2. All discovery dealing exclusively with issues  
7 presented by the counterclaim, such as expert discovery on  
8 bad faith issues, is **STAYED**. I recognize that there may be  
9 an overlap in discovery between the rescission claim and the  
10 counterclaim. It is not my intention to stay any discovery  
11 which may lead to the production of evidence admissible on  
12 the rescission claim. By **Monday, November 3, 2008**, each  
13 party shall advise the court in writing which, if any, of the  
14 discovery matters presently before the court have not been  
15 stayed and still need to be decided.

16 Dated: October 30, 2008

17   
18 \_\_\_\_\_  
19 Bernard Zimmerman  
20 United States Magistrate Judge

21 G:\BZALL\BZCASES\UNIONAMERICA V. FORT MILLER\AMENDED ORDER STAYING  
22 PLAINTIFF'S MOTION TO DISMISS.wpd

23  
24  
25  
26  
27  
28