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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNIONAMERICA INSURANCE CO., )  
LIMITED, Successor-in- )  
interest to ST. PAUL ) No. C05-1912 BZ  
REINSURANCE, )  
 )  
Plaintiff(s), ) PRETRIAL ORDER  
 )  
v. )  
 )  
THE FORT MILLER GROUP, INC., )  
THE FORT MILLER CO. and )  
BEECHE SYSTEMS CORP., )  
Defendant(s). )  
 )  
\_\_\_\_\_ )

The pretrial conference in this case was held on February 3, 2009. Plaintiff was represented at the conference by Michelle R. Press, Esq. and Laura R. Ramos, Esq. Defendants were represented by Ethan Allen Hunt Miller, Esq., David A. Gabianelli, Esq., and Daniel T. Balmat, Esq.

This Order shall control the subsequent conduct of the case and be modified only to prevent manifest injustice. See Fed. R. Civ. P. 16(e).

**1. LENGTH AND TIME OF TRIAL**

Trial shall begin on Monday, February 23, 2009, at 9:00

1 a.m. in Courtroom G, 15th Floor, Federal Building, 450 Golden  
2 Gate Avenue, San Francisco, California 94102. The tentative  
3 trial schedule is as follows:

4	Monday, February 23	9:00 a.m. - 3:00 p.m.
	Tuesday, February 24	9:00 a.m. - 4:00 p.m.
5	Wednesday, February 25	9:00 a.m - 12:30 p.m; and
		2:30 p.m. - 4:00 p.m.
6	Thursday, February 26	9:00 a.m. - 4:00 p.m.
	Friday, February 27	9:00 a.m. - 4:00 p.m.

7 Plaintiff shall be prepared to call witnesses **Monday,**  
8 **February 23, 2009 at 9:00 a.m.** Each side shall have a total  
9 of **12 hours** within which to present testimony. Each side  
10 shall schedule witnesses to avoid any interruption in the  
11 presentation of testimony. Witnesses may be called out of  
12 order with leave of court.

13 **2. CLAIMS TO BE TRIED**

14 The trial scheduled to begin February 23, 2009 is a  
15 bench trial limited to Unionamerica's claims for rescission  
16 and reimbursement and Fort Miller's answer and affirmative  
17 defenses to those claims. (See Amend. Order Staying  
18 Counterclaim and Denying Request for Sanction, October 30,  
19 2008.) The parties shall either agree on the manner in which  
20 the Court should handle plaintiff's claim for reimbursement  
21 or, if they are unable to agree, each side shall file a brief  
22 by **Wednesday, February 11, 2009**, of no more than 5 pages,  
23 setting forth its position on how this claim should be  
24 handled.

25 **3. RULINGS ON MOTIONS IN LIMINE**

26 (1) Plaintiff's motion to exclude testimony regarding  
27 bad faith evidence is **DENIED** as overbroad, subject to being  
28

1 renewed at trial with respect to specific evidence. If  
2 defendant believes there is authority that is inconsistent  
3 with Dollar Systems, Inc. v. Avcar Leasings Systems, Inc.,  
4 890 F.2d 165 (9th Cir. 1989), it may file a supplemental 5  
5 page brief by no later than **Wednesday, February 11, 2009**. No  
6 reply brief shall be filed unless requested.

7 (2) Plaintiff's motion to exclude the testimony of  
8 William Hager is **DENIED** without prejudice to being renewed at  
9 trial in the context of specific documents or testimony. No  
10 expert witness will be permitted to give an opinion as to a  
11 legal conclusion, *i.e.*, an opinion on an ultimate issue of  
12 law. McHugh v. United Serv. Auto. Ass'n, 164 F.3d 451, 454  
13 (9th Cir. 1999); *see also* Shad v. Dean Witter Reynolds, Inc.,  
14 799 F.2d 525, 529 (9th Cir. 1986). The adoption of time  
15 limits should eliminate unnecessarily cumulative testimony.  
16 The motion is **GRANTED** to the extent Hager offers opinions  
17 about whether plaintiff acted in bad faith in seeking  
18 rescission.

19 (3) Plaintiff's motion to exclude expert opinion and  
20 testimony of Donn McVeigh is **DENIED** without prejudice to  
21 being renewed at trial in the context of specific documents  
22 or testimony.

23 (4) Plaintiff's motion to exclude the testimony of  
24 Douglas Shureen is **DENIED** without prejudice to being renewed  
25 at trial in the context of specific testimony.

26 (5) Plaintiff's motion to exclude use of privileged  
27 information inadvertently produced is **DENIED** as moot.

28 (6) Defendant's motion to preclude advice of counsel

1 as a defense is **DENIED** subject to being renewed at trial if  
2 advice of counsel is raised.

3 (7) Defendant's motion to strike portions of Rabb's  
4 report is **DENIED**. The motion to exclude his testimony as  
5 improper rebuttal is **DENIED** without prejudice to being  
6 renewed during his testimony. If it wishes, defendant may  
7 depose Rabb for up to thirty minutes solely on the issue of  
8 why he changed the word "limits" in his report to "premiums."  
9 If defendant chooses to depose Rabb, his deposition fee shall  
10 be borne by plaintiff.

#### 11 4. RULINGS ON MISCELLANEOUS MOTIONS

12 (1) Plaintiff's unopposed request for judicial notice  
13 is **GRANTED**, subject to motions to strike on relevancy grounds  
14 at trial.

15 (2) A separate order will issue on plaintiff's motion  
16 for sanctions pursuant to Rule 37(c).

17 (3) Plaintiff's motion for sanctions pursuant to Rule  
18 16(f) (Doc. 305) is **DENIED**.

#### 19 5. OBJECTIONS TO EXHIBITS

20 (1) Exhibits will not be admitted unless sponsored by a  
21 witness or other foundation is laid. Objections to exhibits  
22 will be considered when an exhibit is introduced.

#### 23 6. OBJECTIONS TO WITNESSES

24 (1) Defendant's objection to plaintiff's calling  
25 witness Chris Neil is **OVERRULED**. If Neil's testimony at  
26 trial contradicts testimony previously given by plaintiff's  
27 Rule 30(b)(6) witnesses, then Neil will be subject to  
28 impeachment with the prior statement of the corporation. See

1 W. R. Grace & Co. v. Viskase Corp., No. 90 C 5383, 1991 U.S.  
2 Dist. LEXIS 14651 at \*7 (N.D. Ill. October 11, 1991). For  
3 the reasons given at the pretrial conference, defendant's  
4 request to depose Neil is DENIED.

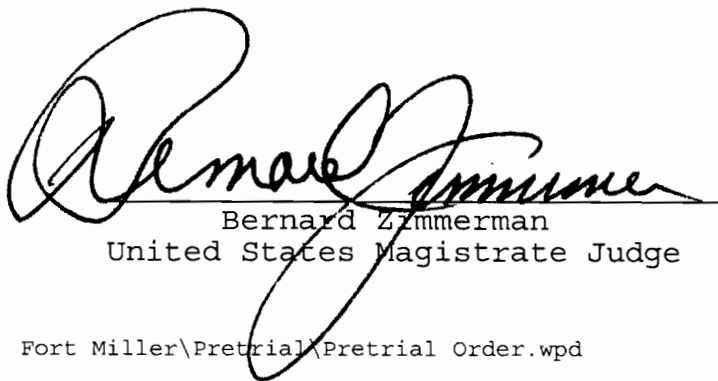
5 7. MISCELLANEOUS

6 Each party is given until **Wednesday, February 11, 2009**  
7 to state whether the following witnesses will be giving live  
8 testimony at trial: Timothy Open; Betty Prah; and Clayton  
9 Melton.

10 Any party who desires a transcript of the trial must  
11 make arrangements with the court reporter. Any party who  
12 needs an interpreter or audio or visual equipment shall make  
13 its own arrangements for same and clear all such equipment  
14 with court security personnel.

15 The parties are instructed to notify the Court  
16 immediately if this action should settle before the  
17 commencement of trial.

18 Dated: 4 Feb 09

  
Bernard Zimmerman  
United States Magistrate Judge

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