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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FIREMAN'S FUND INS.,

No. C 07-06302 CRB

Plaintiff,

**ORDER CLARIFYING SCOPE OF
SUMMARY JUDGMENT ORDER**

v.

GERLING AMERICAN INS.,

Defendant.

This case arose out of an explosion at an asphalt plant, insured by Fireman's Fund Insurance Co. ("FFIC"), that was caused by an employee of Gencor, who was insured by Gerling American Insurance Co. ("Gerling"). In the underlying Florida state court action, FFIC was awarded damages from Gencor in the amount of \$1,751,913.10. After defending Gencor in state court, Gerling took the position that the damage caused by the explosion was not covered by its insurance policy. FFIC challenged Gerling's decision in an action before this Court. On August 11, 2008, the Court granted Defendant Gerling's motion for summary judgment in part, and denied Plaintiff FFIC's motion. The Court found that the property damage caused by the explosion is excluded under the policy's "damage to your work" exclusion. See Order Aug. 11, 2008 at 1.

Pursuant to that order, however, FFIC is entitled to recover "for any damage to property not furnished by Gencor." At that time, the Court could not determine the amount

1 of such property damaged in the explosion. Accordingly, the parties were “ordered to meet
2 and confer to determine the value of non-Gencor property damaged in the explosion.” See
3 Order Aug. 11, 2008 at 14. The parties have now submitted briefs regarding the value of
4 such property.

5 The Court hereby clarifies the scope of its summary judgment order, so the parties
6 know that Plaintiff may recover only for the actual damage to non-Gencor property, and
7 costs flowing directly from the replacement or repair of the non-Gencor property. Plaintiff
8 may not recover for the replacement or repair of Gencor property, or for loss of use or
9 business interruption.

10 The parties are again ordered to meet and confer to discuss the amount of damages
11 that are appropriate. The parties shall appear for a case management conference on Friday,
12 December 17, 2008 at 8:30a.m. to inform the Court of their progress.

13 **IT IS SO ORDERED.**

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16 Dated: October 31, 2008



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE