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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 UNITED STATES,

No. C-08-05005 MMC (EDL)

9 Plaintiff,

**ORDER ON DEFENDANTS' MOTION
TO COMPEL ELECTRONICALLY
STORED INFORMATION,
DEFENDANTS' MOTION TO COMPEL
DOCUMENTS WITHHELD AS
PRIVILEGED, AND PLAINTIFF'S
MOTION TO COMPEL CLAIMS
MANUALS**

10 v.

11 ZURICH INSURANCE COMPANY, et al.,

12 Defendants.
13 _____/

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15 On October 5, 2010, the parties appeared through their counsel of record for hearing on
16 three motions to compel: (1) Defendants Zurich American Insurance Company and Steadfast
17 Insurance Company's (collectively referred to as "Zurich") Motion to Compel Electronically
18 Stored Information, (2) Zurich's Motion to Compel Documents Withheld as Privileged, and (3)
19 Plaintiff United States of America's Motion To Compel Claims Manuals. After considering the
20 parties' briefs and arguments of counsel, the Court makes the following orders:

21 (1) Zurich's Motion to Compel Electronically Stored Information is GRANTED IN PART AND
22 DENIED IN PART WITHOUT PREJUDICE to it being re-filed. In the meantime, the Court
23 orders the parties to meet and confer, through lead counsel in face to face discussions, to attempt
24 to reach agreement on a narrowed scope of Electronically Stored Information to be searched by
25 plaintiff. The Court further orders the parties to file a report concerning the results of the meet and
26 confer discussions to the Court within 7 days of this Order. The parties are further ordered to
27 disclose the names of the persons for which the party conducted any search for electronically
28 stored information, including electronic documents and electronic mail searched for any person,

1 the approximate timeframe in which the search was performed, and a brief description of how the
2 search was conducted. The parties are to exchange this information within 7 days of this Order.

3 (2) Zurich's Motion to Compel Documents Withheld as Privileged is GRANTED IN PART AND
4 DENIED IN PART WITHOUT PREJUDICE to it being re-filed. In the meantime, the Court
5 orders the parties to meet and confer, again through face to face discussions in which lead counsel
6 are participating, regarding the documents on plaintiff's privilege logs that remain in dispute in an
7 attempt to reach agreement where possible. The Court further orders plaintiff to provide revised
8 privilege logs where appropriate. The Court further orders the parties to file a report giving the
9 results of the meet and confer discussions within 7 days of this Order. The Court will allow
10 Defendants to select a limited number of documents to be submitted for in camera review, and
11 such documents shall be submitted to the Court within 5 days of Defendants making such
12 identification.

13 (3) Plaintiff United States of America's Motion to Compel Claims Manuals is GRANTED.
14 Defendants shall provide a further sworn response to plaintiff's Request No. 6 in plaintiff's first set
15 of document requests and produce responsive documents relating to similar environmental
16 remediation claims during the relevant time period within 7 days of this Order. The responsive
17 documents include a document referred to by counsel and by defendants' employee Zeman and
18 defendants' former employee Beshara as 'Best Practices.'

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20 In addition, the Court orders the parties to participate in meet and confer discussions that
21 are face to face discussions in which lead counsel for each party participates before any further
22 motions to compel are filed in this action.

23 Finally, the Court orders that (a) pursuant to the parties' stipulation at the hearing, if
24 documents protected as attorney-client privileged or attorney work product are disclosed in
25 discovery, the producing party can "claw" the document back, regardless of whether adequate
26 precautions were taken to prevent disclosure and (b) pursuant to the parties' stipulation at the
27 hearing, the provisions of Federal Rule of Evidence 502(d) apply to this matter. Rule 502(d)
28 provides: "A federal court order that the attorney-client privilege or work product protection is

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not waived as a result of disclosure in connection with the litigation pending before the court governs all persons or entities in all state or federal proceedings, whether or not they were parties to the matter before the court, if the order incorporates the agreement of the parties before the court."

IT IS SO ORDERED.

Dated: October 12, 2010

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge