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23 ATTORNEYS FOR UNITED STATES OF AMERICA

24 UNITED STATES DISTRICT COURT
 25 NORTHERN DISTRICT OF CALIFORNIA
 26 SAN FRANCISCO DIVISION

27 UNITED STATES OF AMERICA,

28 Plaintiff,

vs.

ZURICH INSURANCE COMPANY,
 ZURICH AMERICAN INSURANCE
 COMPANY and STEADFAST
 INSURANCE COMPANY,

Defendant.

CASE NO. CV08-5005 (MMC)

**STIPULATION AND ~~PROPOSED~~
 ORDER RE AMENDMENT OF TRIAL
 DATE AND CASE MANAGEMENT
 DEADLINES IN LIGHT OF MEDIATION
 SCHEDULED FOR MARCH 2010**

1 WHEREAS, this Court entered a Stipulation and Order Regarding Initial Case Deadlines
2 and Management Issues on December 24, 2008 (Dkt. 8), in which initial case deadlines were
3 postponed approximately 30 days to permit the parties to attend private mediation in January
4 2009;

5 WHEREAS, the parties to this action attended private mediation on January 23, 2009;

6 WHEREAS, this Court entered a Further Stipulation and Order Regarding Initial Case
7 Management Deadlines and Extension of Time to File a Responsive Pleading on February 5,
8 2009 (Dkt. 10), in which initial case deadlines were further postponed to permit the parties to this
9 action to attend a further private mediation session in March 2009; and

10 WHEREAS, the parties to this action attended private mediation on March 13, 2009, and
11 continued telephonic discussions with the assistance of the mediator until April 2009;

12 WHEREAS, the parties to this action attended an initial case management conference on
13 June 12, 2009 and the Court entered a Pretrial Preparation Order (Docket #25).

14 By and through their attorneys of record, the parties stipulate as follows:

15 1. Since late summer 2009, the parties have met and conferred regarding and been
16 engaged in discovery of electronically stored information. The parties negotiated a
17 list of approximately 150 search terms and have been diligently engaged in
18 gathering electronic data responsive to the search terms dating back more than ten
19 years and producing the data after appropriate privilege review. Due to the scope
20 of the data available for searching on both sides, this process has proven more
21 difficult than either party anticipated, and despite the best efforts of the litigants,
22 discovery of electronically stored information has not been completed and will not
23 likely be completed within the next sixty days. The parties have jointly concluded
24 that the case management deadlines cannot realistically be complied with in light
25 of the unforeseen problems with discovery of electronically stored information,
26 which must be completed before resources should be expended on depositions,
27 expert disclosure and expert-related discovery.

28 2. In September of 2009, counsel began to meet and confer on a possible additional

1 mediation effort which would encompass this litigation as well as the parties to
2 United States of America v. California Department of Transportation, Action 09-
3 0437 PJH. In that action, the United States, including The Presidio Trust, are
4 represented by Bradley O'Brien and Davis Forsythe of the United States
5 Department of Justice, Environmental and Natural Resources Division in San
6 Francisco and Washington, D.C., and California Department of Transportation is
7 represented by Janet Wong of the California Department of Transportation. That
8 action concerns the same pollution at issue in this case. Due to the number of
9 parties and attorneys involved, it has taken some time to coordinate a global
10 mediation. Recently, all parties in both actions agreed to attend a global, two-day
11 mediation on March 11-12, 2010 in San Francisco, California with Timothy
12 Gallagher, Esq. serving as the mediator. It is unknown whether additional sessions
13 may be necessary, but given the scope of the issues presented in the two actions,
14 that is a real possibility.

15 3. In light of the complexity and volume of the electronic discovery issue and the
16 global mediation scheduled for next week, counsel of record in this action believe
17 and agree that the case management deadlines set by the Court in Docket #25 for
18 the trial date, non-expert discovery cutoff, designation of experts, expert discovery
19 cutoff, dispositive motion filing date and pretrial conference will be extremely
20 difficult to comply with and should be postponed by approximately 120 days to
21 permit the parties to focus their resources on resolving this matter at mediation.
22 The postponement will also permit the parties to delay further expenditure of
23 resources on the production of electronically stored information, which has proven
24 to be difficult and burdensome on both parties, until after the global mediation
25 process is complete.

26 4. Consistent with the foregoing paragraph, the parties agree to the following revised
27 case management schedule, subject to the approval of the Court:

28 a. Trial date: February 28, 2011

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- b. Non-expert discovery cutoff: September 10, 2010
- c. Expert designation by plaintiff: October 1, 2010
- d. Expert designation by defendant: October 15, 2010
- e. Expert discovery cutoff: November 5, 2010
- f. Dispositive motion filing date: November 19, 2010
- g. Pretrial Conference: February 15, 2011 at 3:00 p.m.
- h. Meet and Confer (Civil L.R. 16-10(b)(5)): January 10, 2011

5. The current case management schedule includes a further status conference on June 25, 2010 at 10:30 a.m., which the parties agree should be continued to September 24, 2010.

IT IS SO STIPULATED.

DATED: March 4, 2010

JOSEPH P. RUSSONIELLO
United States Attorney

By: /s/ Jonathan U. Lee
CHARLES M. O'CONNOR
JONATHAN U. LEE
Assistant U.S. Attorneys
COUNSEL FOR PLAINTIFF

DATED: March 4, 2010

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ David A. Gbianelli
DAVID A. GBIANELLI

Attorneys for Defendants
STEADFAST INSURANCE COMPANY and
ZURICH AMERICAN INSURANCE COMPANY

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 5, 2010



HON. MAXINE M. CHESNEY
United States District Judge