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TRAVELERS CASUALTY AND
6 SURETY COMPANY OF AMERICA

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

9 TRAVELERS CASUALTY AND SURETY)
COMPANY OF AMERICA, a Connecticut)
10 corporation,)
11 Plaintiff,)
12 vs.)

Case No.: CV 09-00878 MHP
STATUS CONFERENCE STATEMENT,
REQUEST FOR CONTINUANCE OF
STATUS CONFERENCE FOR SIXTY
DAYS AND ~~PROPOSED~~ ORDER
DATE: September 14, 2009
TIME: 4:00 P.M.
COURTROOM: 15
JUDGE: Hon. Marilyn Hall Patel

13 DEVELICA, LLC, a California limited)
liability company; STEPHEN W. HUGHES,)
14 an individual; GILMAN RANCH, LLC, a)
California limited liability company; and)
15 STERLING SAVINGS BANK as successor-)
in-interest to SONOMA NATIONAL BANK,)
16 Defendants.)
17)

18
19 Plaintiff Travelers Casualty and Surety Company of America (“Travelers” or “Plaintiff”)
20 submits the following Status Conference Statement and Request for Continuance of the Current
21 Status Conference for approximately sixty days.

22 1. **Jurisdiction and Service:**

23 a. **Jurisdiction:** This court has diversity jurisdiction. These proceedings are instituted
24 pursuant to the provisions of 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000,
25 exclusive of interest and costs, and diversity exists among the parties. Plaintiff is informed and
26 believes that Defendant Stepehn W. Hughes (hereinafter “Hughes”) is an individual who is a foreign
27 national, a citizen of the United Kingdom, but residing in the County of Sonoma, and that

1 Defendants Develica, LLC (hereinafter “Develica”), and Gilman Ranch, LLC (hereinafter “Gilman”)
2 are California limited liability companies with their principal places of business or headquarters in
3 the State of California, County of Sonoma.

4 **b. Service:** Defendants Hughes, Develica and Gilman (collectively “Defendants” or
5 “Indemnitors”) have all been served. Plaintiff has been making efforts to informally resolve this
6 action with Defendants, who are represented by counsel, over the telephone and in writing. Written
7 proposals have been exchanged but the parties have not reached an agreement.

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9 2. **Facts:**

10 At the request of Hughes, Develica and Gilman (collectively referred to herein as “Indemnitors”
11 or “Defendants”) Travelers Casualty and Surety Company of America (“Travelers” or “Defendants”), as
12 surety, issued certain payment and subdivision bonds on behalf of Gilman, as principal, and in
13 connection with a subdivision construction development project in the State of California, specifically in
14 the County of Sonoma.

15 As a condition precedent to Travelers issuance of surety bonds, Indemnitors and each of them
16 executed a General Agreement of Indemnity for Contractors in favor of Travelers (the “Indemnity
17 Agreement”). The Indemnity Agreement provides, among other things, that Indemnitors will indemnify
18 Travelers for all loss, liability, damages and expenses, including court costs and attorney’s fees, sustained
19 or incurred by Travelers in connection with or as a result of (a) the issuance of any surety bond on behalf
20 of the contractor and/or (b) any default by any of the Indemnitors under and pursuant to the terms of the
21 Indemnity Agreement. Further, the Indemnity Agreement provides that upon demand, Indemnitors will
22 place with Travelers an amount of monies determined by Travelers as necessary to meet all of its
23 obligations and expenses under the surety bonds issued on by Travelers.

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25 Travelers has received claims from Fedco Construction, Inc. (“Fedco”) alleging that Gilman
26 breached its obligations to Fedco under certain bonds. Under the subject bonds, Travelers has
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1 incurred and will continue to incur costs and expenses, including attorneys' fees, as a consequence of
2 the surety bonds issued by it on behalf of Gilman.

3 Fedco made claims against Travelers for recovery on the bonds and Travelers was
4 compelled to pay such claims, in the present amount of One hundred and twenty thousand, four
5 hundred five and 98/100 dollars (\$120,405.98).

6 Indemnitors have failed and refused to indemnify Travelers for its losses and expenses incurred
7 under the surety bonds. Indemnitors have also failed and refused to post collateral security as required
8 under the Indemnity Agreement. As a result of these failures by the Indemnitors, Travelers has incurred
9 and continues to incur losses, expenses and costs.

10 As stated in its Complaint filed in this Action, Travelers seeks recovery of losses, costs and
11 expenses that Travelers has incurred and/or will incur as a result of Defendants/Indemnitors' failure to
12 indemnify Travelers pursuant to the Indemnity Agreement and Defendants/Indemnitors' failure to post
13 collateral security as required by the Indemnity Agreement. Travelers also seeks specific performance by
14 Defendants/Indemnitors pursuant to the Indemnity Agreement by (1) indemnification of Travelers by
15 Defendants/Indemnitors and (2) posting of collateral security by Defendants/Indemnitors.

16 Travelers also has alleged causes of action against Sterling Bank for breach of a "set-aside"
17 contract and promissory estoppel but has just recently learned that no funds remain in the the set-aside
18 account, so Sterling Bank will be dismissed as a defendant.

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20 3. **Legal Issues:**

21 Plaintiff Travelers will have the burden of establishing the existence of the indemnity obligations
22 by Indemnitors as well as the validity of the indemnity agreements at issue. In addition, Travelers will
23 have the burden of establishing that Indemnitors breached their obligations and that Travelers is entitled to
24 the remedies sought. Travelers is unaware of any valid defenses that Indemnitors may raise if this matter
25 proceeds to trial. As mentioned in previous sections, Travelers, through its counsel, is making efforts to
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1 informally resolve the matter with all Indemnitors/Defendants. As such Indemnitors/Defendants have not
2 asserted any affirmative defenses.

3 4. **Motions:**

4 None.

5 5. **Amendment of Pleadings:**

6 None.

7 6. **Evidence Preservation:**

8 Travelers has maintained and preserved documents relevant to this action.

9 7. **Disclosures:**

10 Disclosures have not yet been exchanged because the Defendants have not yet appeared and
11 the parties are making efforts to resolve the matter informally.

12 8. **Discovery:**

13 Discovery has not commenced because the Defendants have not yet appeared and the
14 parties are making efforts to resolve the matter informally.

15 9. **Class Action:**

16 Not Applicable.

17 10. **Related Cases :**

18 Not Applicable.

19 11. **Relief Sought:**

20 Travelers has received claims from Fedco Construction, Inc. ("Fedco") alleging that Gilman
21 breached its obligations to Fedco under certain bonds. Under the subject payment bonds, Travelers has
22 incurred and will continue to incur costs and expenses, including attorneys' fees, as a consequence of the
23 bonds issued by it on behalf of Gilman.

24 Fedco made claims against Travelers for recovery on the subdivision bonds and Travelers was
25 compelled to pay such claims, in the present amount of One hundred and twenty thousand, four
26 hundred five and 98/100 dollars (\$120,405.98).

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1 12. **Settlement and ADR:**

2 The parties, through their respective counsel, have exchanged settlement demands and offers
3 and are still making efforts to resolve the matter. If the parties are unable to resolve the matter
4 informally a mediation session would likely be beneficial.

5 13. **Consent to Magistrate for All Purposes:**

6 Travelers does not consent to a Magistrate Judge for all purposes.

7 14. **Other References:**

8 This case is not suitable for reference to binding arbitration, a special master or the Judicial
9 Panel for Multidistrict Litigation.

10 15. **Narrowing Issues:**

11 Travelers' counsel believes that some of the legal and factual issues can be narrowed and or
12 stipulated to by the parties. However, because Defendants have not yet appeared this issue will be
13 addressed more fully at a later date.

14 16. **Expedited Schedule:**

15 Unknown at this time.

16 17. **Scheduling:**

17 Travelers requests that the court defer scheduling these deadlines since the case is not yet
18 at issue and continue the currently scheduled status conference for approximately sixty (60) days.

19 18. **Trial:**

20 At this time Travelers respectfully reserves its right to a jury trial.

21 19. **Disclosure of Non-party Interested Entities or Persons:**

22 Plaintiff's counsel is conferring with Plaintiff in order to obtain accurate information in
23 response to this issue and requests additional time to comply.

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1 20. **Request For Sixty (60) Day Continuance of Status Conference:**

2 Plaintiff respectfully requests that the Court continue the currently scheduled status
3 conference for approximately sixty (60) days. A continuance will provide Plaintiff and the
4 currently served Defendants to possibly resolve the matter.

5 Dated: August 14, 2009

McKAGUE & TONG, LLP
/s/

6
7 Michele Miller
8 Attorneys for Plaintiff TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA

9 **~~PROPOSED ORDER CONTINUING STATUS CONFERENCE~~**

10 The Court having considered the Status Conference Statement submitted by Plaintiff Travelers
11 Casualty and Surety Company of America, and Good Cause having been shown hereby continues the
12 currently schedules Status Conference from September 14, 2009 to:

13 November 30, 2009 at 4:00 p.m. in Courtroom 15.

14 IT IS SO ORDERED

15 Dated: 8/18, 2009

16 Hon. Marilyn H. Patel
17 Chief Judge U.S. District Court Northern
18 District of California



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