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Attorneys for\*Defendant, Counter-Claimant and Cross-  
Complainant ONEBEACON AMERICA INSURANCE  
COMPANY, formerly known as Commercial Union  
Insurance Company, individually and as successor-in-  
interest to Employers Commercial Union Company,  
including Employers Liability Assurance Corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EMPLOYERS INSURANCE COMPANY OF  
WAUSAU

Plaintiff,

v.

PEPSIAMERICAS, INC.; TRAVELERS  
INDEMNITY COMPANY; CONTINENTAL  
INSURANCE COMPANY; ARGONAUT  
INSURANCE COMPANY;  
NORTHWESTERN NATIONAL  
INSURANCE COMPANY OF MILWAUKEE,  
WISCONSIN; NATIONAL UNION FIRE  
INSURANCE COMPANY OF PITTSBURG,  
PA.; CENTURY INDEMNITY COMPANY;  
ALLSTATE INSURANCE COMPANY; ONE  
BEACON INSURANCE GROUP; and DOES 1  
through 50, inclusive,

Defendants.

AND RELATED COUNTER-CLAIMS AND  
CROSS-CLAIMS

CASE NO. CV 09 3419 (CRB)

STIPULATION OF DISMISSAL AS TO  
ALL REMAINING ACTIONS, CROSS-  
ACTIONS AND COUNTER-ACTIONS  
WITHOUT PREJUDICE AND  
~~PROPOSED~~ ORDER

Dept.: 8  
Judge: Hon. Charles R. Breyer

Complaint Filed: June 29, 2009

1 WHEREAS this matter commenced pursuant to removal to the Northern District of  
2 California on July 24, 2009, Case No. 09-cv-03419 CRB, from the California Superior  
3 Court for the County of Sonoma, SCV 245375.

4 WHEREAS Defendant, Counter-Claimant and Cross-Complainant OneBeacon  
5 America Insurance Company, formerly known as Commercial Union Insurance Company,  
6 individually and as successor-in-interest to Employers Commercial Union Company,  
7 including Employers Liability Assurance Corporation ("OneBeacon") filed its Answer and  
8 Counter-Claim for Declaratory Relief as to Equitable Contribution and Equitable  
9 Indemnity ("Northern District Counter-Claim") against Plaintiff / Counter-Defendant  
10 Employers Insurance Company of Wausau ("Wausau") on September 18, 2009;

11 WHEREAS OneBeacon filed its Cross-Complaint for Declaratory Judgment and  
12 Damages for Unjust Enrichment on September 18, 2009 ("Northern District Cross-  
13 Complaint") against Cross-Defendants PepsiAmericas, Inc., Travelers Indemnity Company  
14 ("Travelers"), Continental Insurance Company ("Continental"), Argonaut Insurance  
15 Company ("Argonaut")<sup>1</sup>, Northwestern National Insurance Company of Milwaukee,  
16 Wisconsin ("Northwestern"), National Union Fire Insurance Company of Pittsburg, PA  
17 ("National Union"), Century Indemnity Company ("Century") and Allstate Insurance  
18 Company ("Allstate");

19 WHEREAS Century filed its Answer and Counterclaim to Wausau's Complaint on  
20 September 18, 2009, and its Answer and Counterclaim to OneBeacon's Counterclaim on  
21 October 8, 2009;

22 WHEREAS certain claims have been dismissed in this action and certain claims  
23 remain pending.

24 WHEREAS on April 14, 2010 Pepsi-Cola Metropolitan Bottling Company, Inc.,  
25 successor-in-interest to Counter-Defendant PepsiAmericas, Inc. ("Pepsi") filed an  
26 insurance coverage lawsuit in the United States District Court for the Central District of  
27

28 <sup>1</sup> Cross-defendant Argonaut Insurance Company has already been dismissed from this Cross-complaint by OneBeacon.

1 California, Case No. CV 10 2696 SVW (MANx) ("Central District Action") against  
2 OneBeacon and Century, encompassing claims substantially similar to those claims now  
3 pending at issue in the instant Northern District action, and including additional claims;

4 WHEREAS OneBeacon has filed responsive pleadings, counter-claims and cross-  
5 claims in the Central District Action that are substantially similar to the pleadings filed in  
6 the instant Northern District action, encompassing similar and additional insurance  
7 coverage issues as are presently pending in the instant Northern District action; and

8 WHEREAS since the issues in the Central District Action include claims that are  
9 not pled in the instant action, and encompass all pending allegations of OneBeacon's  
10 Northern District Cross-Claim and Counter-Claim, there is good cause to dismiss the  
11 remaining claims in this action in order to proceed with the similar action in the Central  
12 District;

13 IT IS HEREBY STIPULATED AND AGREED TO by and among OneBeacon,  
14 Pepsi, Wausau, Travelers, Continental, Northwestern, National Union, Century, and  
15 Allstate through their designated counsel, that pursuant to FRCP 41(a)(1):

16 1. OneBeacon's Northern District Counter-Claim and Northern District Cross-  
17 Claim in the instant action be, and hereby is, dismissed without prejudice, with each party  
18 to bear its own attorneys' fees and costs and to waive all fees and costs incurred in to this  
19 action as to each other.

20 2. Wausau's remaining Fourth Cause of Action against OneBeacon, Century,  
21 Travelers, Continental, National Union, Northwestern and Allstate in the instant action be,  
22 and hereby is, dismissed without prejudice, with each party to bear its own attorneys' fees  
23 and costs and to waive all fees and costs incurred in to this action as to each other.

24 3. Century's Counter-Claim against Wausau and Counter-Claim against  
25 OneBeacon in the instant action be, and hereby is, dismissed without prejudice, with each  
26 party to bear its own attorneys' fees and costs and to waive all fees and costs incurred in to  
27 this action as to each other.

28

1 DATED: October 4, 2010

SELMAN BREITMAN LLP

2  
3 By:   
JAN L. POCATERRA  
KATHERINE W. KEHR

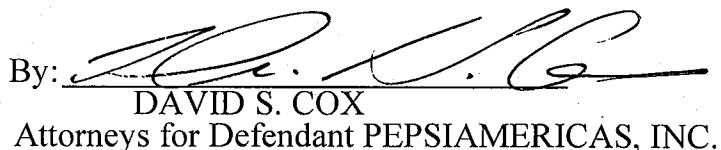
5 MUSICK PEELER & GARRETT LLP

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7 By:   
STEVEN T. ADAMS

9 Attorneys for Defendant, Counter-Claimant and  
10 Cross-Complainant ONEBEACON AMERICA  
11 INSURANCE COMPANY, formerly known as  
12 Commercial Union Insurance Company, individually  
and as successor-in-interest to Employers Commercial  
Union Company, including Employers Liability  
Assurance Corporation

13 DATED: October 4, 2010

MORGAN, LEWIS & BOCKIUS LLP

15 By:   
DAVID S. COX  
Attorneys for Defendant PEPSIAMERICAS, INC.

18 DATED: October \_\_, 2010

ABBEY, WEITZENBERG, WARREN & EMERY

20 By: \_\_\_\_\_  
MITCHELL BRUCE GREENBERG  
Attorneys for Defendant TRAVELERS INDEMNITY  
COMPANY

23 DATED: October \_\_, 2010

ABBEY, WEITZENBERG, WARREN & EMERY

25 By: \_\_\_\_\_  
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INSURANCE COMPANY

1 DATED: October \_\_, 2010

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3 By: \_\_\_\_\_  
4 MITCHELL BRUCE GREENBERG  
5 Attorneys for Defendant NORTHWESTERN  
6 NATIONAL INSURANCE COMPANY OF  
7 MILWAUKEE, WISCONSIN

8  
9 DATED: October \_\_, 2010

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14 INSURANCE CO. OF PITTSBURGH, PA

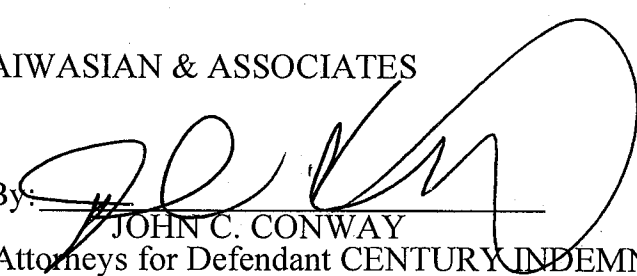
15  
16 DATED: October \_\_, 2010

SINNOTT, DITO, MOURA & PUEBLA

17  
18 By: \_\_\_\_\_  
19 JANE KARREN BAKER  
20 Attorneys for Defendant NATIONAL UNION FIRE  
21 INSURANCE CO. OF PITTSBURGH, PA

22 DATED: October 4, 2010

AIWASIAN & ASSOCIATES

23  
24 By:  \_\_\_\_\_  
25 JOHN C. CONWAY  
26 Attorneys for Defendant CENTURY INDEMNITY  
27 COMPANY, as successor to CCI Insurance Company,  
28 as successor to Insurance Company of North America

DATED: October \_\_, 2010

TROUTMAN SANDERS LLP

By: \_\_\_\_\_  
LOUISE MARIE MCCABE  
Attorneys for Defendant ALLSTATE INSURANCE  
COMPANY, solely as successor-in-interest to  
NORTHBROOK EXCESS & SURPLUS  
INSURANCE COMPANY, formerly known as  
NORTHBROOK INSURANCE COMPANY

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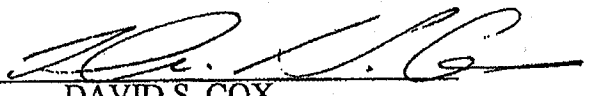
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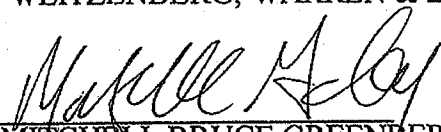
DATED: October 4, 2010

MORGAN, LEWIS & BOCKIUS LLP

By:   
DAVID S. COX  
Attorneys for Defendant PEPSIAMERICAS, INC.

DATED: October 18, 2010

ABBEY, WEITZENBERG, WARREN & EMERY

By:   
MITCHELL BRUCE GREENBERG  
Attorneys for Defendant TRAVELERS INDEMNITY  
COMPANY

DATED: October 18, 2010

ABBEY, WEITZENBERG, WARREN & EMERY

By:   
MITCHELL BRUCE GREENBERG  
Attorneys for Defendant CONTINENTAL  
INSURANCE COMPANY



1 DATED: October \_\_, 2010

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3 By: MITCHELL BRUCE GREENBERG  
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5 NATIONAL INSURANCE COMPANY OF  
6 MILWAUKEE, WISCONSIN

7 DATED: October \_\_, 2010

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9 By: MITCHELL BRUCE GREENBERG  
10 Attorneys for Defendant NATIONAL UNION FIRE  
11 INSURANCE CO. OF PITTSBURGH, PA

12 DATED: October 9, 2010

SINNOTT, DITO, MOURA & PUEBLA

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14 By: Jane Karren Baker  
15 JANE KARREN BAKER  
16 Attorneys for Defendant NATIONAL UNION FIRE  
17 INSURANCE CO. OF PITTSBURGH, PA

18 DATED: October 4, 2010

AIWASIAN & ASSOCIATES

19 By: John C. Conway  
20 JOHN C. CONWAY  
21 Attorneys for Defendant CENTURY INDEMNITY  
22 COMPANY, as successor to CCI Insurance Company,  
23 as successor to Insurance Company of North America

24 DATED: October \_\_, 2010

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6 NATIONAL INSURANCE COMPANY OF  
7 MILWAUKEE, WISCONSIN

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9 DATED: October \_\_, 2010

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14 INSURANCE CO. OF PITTSBURGH, PA

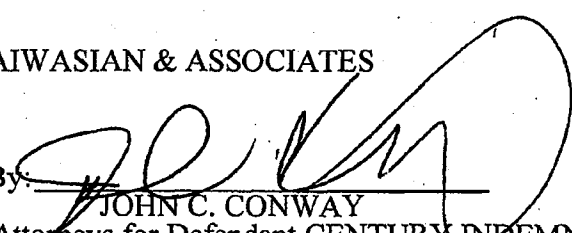
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21 INSURANCE CO. OF PITTSBURGH, PA

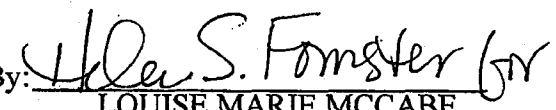
22 DATED: October 4, 2010

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24 By:  \_\_\_\_\_  
25 JOHN C. CONWAY  
26 Attorneys for Defendant CENTURY INDEMNITY  
27 COMPANY, as successor to CCI Insurance Company,  
28 as successor to Insurance Company of North America

DATED: October 22, 2010

TROUTMAN SANDERS LLP

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30 By:  \_\_\_\_\_  
31 LOUISE MARIE MCCABE  
32 Attorneys for Defendant ALLSTATE INSURANCE  
33 COMPANY, solely as successor-in-interest to  
34 NORTHBROOK EXCESS & SURPLUS  
35 INSURANCE COMPANY, formerly known as  
36 NORTHBROOK INSURANCE COMPANY

1 DATED: October 18<sup>th</sup> 2010

BARBER LAW GROUP

2  
3 By:   
4 BRYAN M. BARBER  
5 Attorneys for Plaintiff EMPLOYERS INSURANCE  
6 COMPANY OF WAUSAU  
7

8 GOOD CAUSE appearing, IT IS SO ORDERED.  
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14 Date: October 26, 2010

