

1 **COX, WOOTTON, GRIFFIN,**
 2 **HANSEN & POULOS, LLP**
 3 Marc T. Cefalu (SBN 203324)
 4 190 The Embarcadero
 5 San Francisco, CA 94105
 6 Telephone No.: 415-438-4600
 7 Facsimile No.: 415-438-4601

8 Attorneys for Defendant
 9 BAYSIDE BOATWORKS, INC.

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA
 12 (E-Filing)

13 ROBERT C. KEMPER,) Case No.: C 10-0242MEJ

14 Plaintiff,) **JOINT STATUS REPORT;**
 15) ~~**PROPOSED**~~ **ORDER**

16 v.)

17 BAYSIDE BOATWORKS, INC.,)

18 Defendant.)

19 _____)

20 Plaintiff Robert Kemper (“Kemper”) and defendant Bayside Boatworks, Inc.,
 21 (“Bayside”), by and through their respective counsel, pursuant to the Court’s order dated
 22 November 15, 2010, hereby submit this Joint Status Report.

23 **STATUS**

24 **Summary of Factual and Procedural Background**

25 As the Court may recall based upon the parties prior submissions, this matter
 26 involves a claim being asserted by plaintiff Robert Kemper against his former employer
 27 Bayside Boatworks, Inc., for personal injuries he allegedly sustained during the course and
 28 scope of his employment. Plaintiff alleges that Bayside Boatworks, Inc., was required to
 maintain U.S. Longshore and Harborworkers’ Compensation insurance coverage to provide
 insurance coverage for such claims but that defendant failed to do so. Plaintiff alleges that
 he is entitled to maintain this civil action as a result of the defendant’s alleged failure to
 procure appropriate U.S. Longshore and Harborworkers’ Compensation insurance.

Defendant denies these allegations.

COX, WOOTTON,
 GRIFFIN, HANSEN
 & POULOS, LLP
 190 THE EMBARCADERO
 SAN FRANCISCO, CA
 94105
 TEL: 415-438-4600
 FAX: 415-438-4601

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1 The plaintiff is also a claimant in a U.S. Longshore and Harborworkers'
2 Compensation Act claim (the "Longshore Action") pending before the U.S. Department of
3 Labor. The Longshore Action trial is currently scheduled to commence on December 16,
4 2010.¹ Defendant Bayside Boatworks, Inc., is the respondent employer in that action. The
5 plaintiff is also the applicant in a currently pending California State Workers Compensation
6 Act claim with Bayside Boatworks the respondent in that action. All three actions (this civil
7 action and the two workers compensation actions) involve the same alleged injuries.

8 The parties to this action, their counsel, counsel for Defendant in the related
9 California State Workers' Compensation Action, counsel for Plaintiff in the related U.S.
10 Longshore and Harborworkers' Compensation Action, and one additional party (the
11 "additional party" is the E&O carrier for defendant Bayside Boatwork's Inc.'s insurance
12 broker to whom the defendant has tendered its defense in this action and the Longshore
13 action) *had originally agreed to participate in a global mediation in an attempt to resolve*
14 *the issues raised in this action as well as each of the companion workers compensation*
15 *actions.* The mediation had been scheduled to take place on November 20, 2010 before
16 Michael Ornstil at JAMS. Ultimately, the mediation did not take place because defendant
17 Bayside's insurance broker (and its E&O carrier) refused to provide Mr. Kemper's
18 Longshore Action counsel with a settlement offer in advance of the mediation. Mr.
19 Kemper's Longshore Action counsel was not convinced that a mediation would be
20 worthwhile without such a preliminary offer and as a result the mediation was cancelled.
21 The parties are, however, continuing to informally discuss potential settlement options.

22 Status of the Pleadings

23 Defendant Bayside has not yet submitted its responsive pleading to Mr. Kemper's
24 complaint. The parties had agreed to an open extension of time to respond while attempting
25 to schedule a global mediation. The parties' intent was to avoid the cost and expense

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27 ¹ Employer Bayside Boatworks, Inc., has requested that the U.S. Longshore and Harborworkers'
28 Compensation Act trial be continued as a result of claimant Robert Kemper's recent physical incapacity
which resulted in his being unable to attend a defense medical examination as well as precluding his
appearance at deposition in the Longshore Action. Mr. Kemper's Longshore counsel is not opposing
the continuance.

1 associated with preparing and filing those pleadings while they actively pursued settlement
2 negotiations through a formal mediation. Those negotiations continue on an informal basis.
3 However, as a result of the mediation recently being cancelled, ***counsel for the parties have***
4 ***met and conferred and request that the deadline for Bayside’s responsive pleading to be***
5 ***filed and served be extended to January 7, 2011.*** This further extension will allow the
6 parties to determine whether there is a possibility to resolve all matters informally or
7 whether litigation in this action, concurrently with the U.S. Longshore Action, will be
8 necessary. If a settlement cannot be reached, then the defendant will file and serve its
9 responsive pleading by the above requested deadline.

10 The undersigned counsel for Bayside further submits that the ***agreed-upon*** extension
11 of time to respond is reasonable due to personal family obligations which cannot be
12 avoided. The undersigned will soon become unavailable and will be out of the office for
13 approximately two weeks or more. That unavailability may arise at any moment as
14 Bayside’s undersigned counsel’s wife is currently 40 weeks pregnant. Bayside’s counsel’s
15 wife’s due date was November 28, 2010, and the birth is now imminent. Following the
16 birth, Bayside’s counsel will be taking a short “paternity leave” to attend to family
17 obligations. In light of Bayside’s counsel’s impending unavailability due to personal
18 matters, it is submitted that the extension of time to respond requested above is reasonable.

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& POULOS, LLP
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1 **CONCLUSION**

2 Based upon the above, counsel for the parties request that the defendant's deadline
3 to file and serve its responsive pleading in this case be continued to January 7, 2011, and
4 that a Case Management Conference then be scheduled at the Court's convenience.

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6 Respectfully submitted,

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8 Dated: November 29, 2010

BRODSKY MICKLOW BULL & WEISS LLP
Attorneys for Plaintiff ROBERT KEMPER

9
10 By: /S/ Edward M. Bull III
Edward M. Bull III

11
12 Dated: November 29, 2010

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Defendant
BAYSIDE BOATWORKS, INC.

13
14
15 By: /S/ Marc T. Cefalu
Marc T. Cefalu

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17 **~~PROPOSED~~ ORDER**

18 BASED UPON THE FOREGOING, AND GOOD CAUSE APPEARING, IT IS
19 ORDERED THAT defendant Bayside Boatworks, Inc., shall file and serve its responsive
20 pleading in this matter no later than January 7, 2011. The Court further orders that a Case
21 Management Conference take place on February 17, 2011 at 10:00 a.m. in Courtroom B. All
22 case management deadlines shall be adjusted accordingly.

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24 Dated: November 30, 2010

25 By: 
Magistrate Maria-Elena James

26 COX, WOOTTON,
27 GRIFFIN, HANSEN
& POULOS, LLP
190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
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FAX: 415-438-4601

28 BAY.Kemper/2733/