

E-Filed 1/4/12

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5 Attorneys for Third-Party Defendant and Cross-Claimant
 INTERSTATE FIRE & CASUALTY COMPANY

7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **(San Francisco)**

11 SIERRA BAY CONTRACTORS, INC., A
 12 California Corporation,

CASE NO: 3:10-CV-04611-RS

13 Plaintiff,

14 v.

15 WESTCHESTER SURPLUS LINES
 INSURANCE COMPANY, a Georgia
 16 corporation, and ROES 1 through 50,
 inclusive,

**STIPULATION TO ALLOW THIRD
 PARTY DEFENDANT, INTERSTATE
 FIRE & CASUALTY COMPANY, TO
 FILE A CROSS-CLAIM**

~~PROPOSED~~ ORDER

17 Defendants.

[Fed. R. Civ. Proc. 15 (a)(2)]

18
 19 WESTCHESTER SURPLUS LINES
 INSURANCE COMPANY, a Georgia
 Corporation,

20 Third-Party Plaintiff,

21 v.

22 ASPEN SPECIALTY INSURANCE
 23 COMPANY, a North Dakota Corporation;
 CONTINENTAL CASUALTY
 24 COMPANY, an Illinois Corporation;
 FEDERATED MUTUAL INSURANCE
 25 COMPANY, a Minnesota Corporation;
 FEDERATED SERVICE INSURANCE
 26 COMPANY, a Minnesota Corporation;
 GEMINI INSURANCE COMPANY, a
 27 Delaware Corporation; GREAT
 28 AMERICAN ASSURANCE COMPANY,
 an Ohio Corporation; GREAT

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1 AMERICAN INSURANCE COMPANY,
2 an Ohio Corporation; INTERSTATE FIRE
& CASUALTY COMPANY, an Illinois
3 Corporation; LEXINGTON INSURANCE
COMPANY, a Delaware Corporation;
4 LIBERTY SURPLUS INSURANCE
CORPORATION, a New Hampshire
5 Corporation; NAVIGATORS
SPECIALTY INSURANCE COMPANY
6 *formerly known as* NIC Insurance
Company, a New York Corporation;
7 NATIONAL FIRE INSURANCE
COMPANY OF HARTFORD, *successor*
8 *by merger* to Transcontinental Insurance
Company, an Illinois Corporation; OLD
9 REPUBLIC GENERAL INSURANCE
CORPORATION, a an Illinois
10 Corporation; SCOTTSDALE
INSURANCE COMPANY, an Ohio
11 Corporation; TRUCK INSURANCE
EXCHANGE, a California Corporation;
12 VIRGINIA SURETY COMPANY, an
Illinois Corporation.

Third-Party Defendants.

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15 Third-Party Plaintiff Westchester Surplus Lines Insurance Company (“Westchester”)
16 and Third Party Defendant Interstate Fire & Casualty Company (“Interstate”), by and through
17 their respective counsel of record, hereby stipulate and agree to the following:

- 18 1. On or about April 22, 2011, Westchester filed a third party complaint for
19 equitable contribution against various additional insured carriers, including Interstate in the
20 above-captioned action.
- 21 2. On or about June 13, 2011, Interstate filed and served its answer to Westchester’s
22 third-party complaint in the above-captioned action.
- 23 3. Interstate now seeks to assert a cross-claim in this action.
- 24 4. Federal Rule of Civil Procedure Rule 15 (a)(2) allows the filing of amendments to
25 pleadings, including to the answer in order to assert a cross-claim, through stipulation from the
26 opposing party. Federal Rule of Civil Procedure Rule 15 (a)(2) states in part:

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1 a) Amendments Before Trial.

2 (2) *Other Amendments.* In all other cases, a party
3 may amend its pleading only with the opposing
4 party's written consent or the court's leave. The
5 court should freely give leave when justice so
6 requires.

7 5. Westchester is the only party which has asserted a claim against Interstate in this
8 matter, and therefore Westchester is the only opposing party as to Interstate.

9 6. Westchester herein stipulates to allow Interstate to file a cross-claim in this
10 matter.

11 7. Interstate's cross-claim is based on new developments that came to light during
12 the recent mediation before Bruce Edwards at JAMS in San Francisco, California on or about
13 December 2, 2011 in the above-captioned action.

14 8. Specifically, Interstate understood that the recent mediation was intended to
15 explore a global resolution of all claims in dispute between the parties, including coverage issues
16 in the above-captioned action and liability issues related to the underlying arbitration and
17 litigation.

18 9. Interstate issued a general liability policy to Elite Plastering, Inc. as a named
19 insured. Elite Plastering, Inc. was the stucco and lathing subcontractor for Sierra Bay
20 Contractors for the PE Complex at issue in the underlying arbitration. Elite Plastering, Inc. used
21 another subcontractor, Service Lathing, Inc., for portions of the work performed for Sierra Bay
22 Contractors on the PE Complex. The subcontract agreement between Elite Plastering, Inc. and
23 Service Lathing, Inc. required Service Lathing, Inc. to provide additional insured coverage to
24 Elite Plastering, Inc. and Sierra Bay Contractors with respect to the PE Complex.

25 10. It is Interstate's position that a resolution of the global resolution of coverage and
26 liability issues related to Sierra Bay Contractors and Elite Plastering, Inc. cannot be reached
27 without the participation of all insurers for Elite Plastering, Inc. and its subcontractor, Service
28 Lathing, Inc.

1 11. As a result, Interstate now wishes to file a cross-claim for declaratory relief,
2 equitable contribution, and subrogation against the insurers for Service Lathing, Inc.

3 12. Interstate's cross-claim arises out of the same transaction, occurrence, or series of
4 transactions or occurrences already at issue in the above-captioned action.

5 13. Interstate's cross-claim would be in the interests of justice and would promote the
6 efficient resolution of all claims between the parties in the above-captioned action.

7 14. Accordingly, Westchester and Interstate hereby stipulate that Interstate may file a
8 cross-claim.

9 15. A copy of the cross-claim is attached hereto as Exhibit 1.

10 16. The parties also stipulate that the cross-claim will be deemed filed on the date that
11 this stipulation is filed.

12 17. Once the cross-claim is deemed filed, Interstate will serve parties to the cross-
13 claim pursuant to applicable Federal Rules of Civil Procedure.

14 18. Good cause exists for this stipulation.

15 19. This stipulation may be executed in counterparts and will retain its full force and
16 effect.

17 20. Facsimile signatures will be acceptable and binding with respect to the
18 enforceability of this stipulation.

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IT IS SO STIPULATED.

DATE: January 3, 2012

WILSON & ELLIN


By:


Mark W. Peck
Attorneys for Third-Party Defendant and Cross-Claimant
INTERSTATE FIRE & CASUALTY COMPANY

DATE: January 2nd, 2012

MORALES FIERRO & REEVES

By:


Ramiro Morales
David A. Astengo
Attorneys for Defendant and Third-Party Plaintiff,
WESTCHESTER SURPLUS LINES INSURANCE
COMPANY

IT IS SO ORDERED.

DATE: January 4, 2012

