

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS PROPERTY CASUALTY) Case Nos. 11-3638-SC, 12-
COMPANY OF AMERICA,) 00371-SC, 13-00088-SC
Plaintiff,)
v.) ORDER FOR SUPPLEMENTAL
) BRIEFING

CENTEX HOMES, NEWMeyer &
DILLION, and DOES 1 through 10
inclusive,

TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA,)
Plaintiff,)
v.)
CENTEX HOMES, NEWMeyer &
DILLION, RGL INC., RGL
FORENSICS, and DOES 1 through 10
inclusive,

TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA, FIDELITY &
GUARANTY INSURANCE COMPANY, THE)
TRAVELERS INDEMNITY COMPANY OF)
CONNECTICUT, and ST. PAUL MERCURY)
INSURANCE COMPANY,)
Plaintiffs,)
v.)
CENTEX HOMES and DOES 1 through)
10 inclusive,)
AND RELATED COUNTERCLAIMS)

1 Case Numbers 12-00371-SC and 13-00088-SC were recently related
2 to another case currently pending before the undersigned, Case
3 Number 11-3638-SC. Now pending before the Court are five separate
4 Rule 12 motions filed in Case Numbers 12-00371-SC and 13-00088-SC.
5 Many of the briefs filed in connection with these motions were
6 submitted before these three cases were related and assigned to the
7 undersigned. In these motions, the parties argue that various
8 claims or counterclaims should be dismissed or stricken because
9 they are duplicative of claims or counterclaims filed in: (1) Case
10 Number 11-3638-SC, (2) another suit between Travelers and Centex
11 currently pending before Judge Virginia A. Phillips in the United
12 States District Court for the Central District of California, Case
13 No. 12-00496, or (3) cross-complaints filed in various superior
14 courts throughout California. As the parties point out, many of
15 these actions involve substantially similar claims or counterclaims
16 and the same underlying construction defect actions. Accordingly,
17 there is a high risk of inconsistent judgments. Further, the
18 duplicative nature of these actions could result in a waste of
19 judicial resources.

20 One way to deal with these problems would be to consolidate
21 all of the actions currently pending before this Court and stay
22 that consolidated case, either in whole or in part, pending a
23 decision on duplicative issues now before the California superior
24 courts, which are in the best position to rule on the issues of
25 California insurance law raised by these cases. The parties may
26 also consider transferring to this Court Case Number 12-00496, the
27 case currently pending before Judge Phillips in the Central
28 District, for the purposes of consolidation. The parties have

1 represented that Case Number 12-00496 is on the verge of
2 settlement. But the stipulated settlement in that action has been
3 pending for almost four months and the parties have yet to
4 consummate an agreement. Indeed, Judge Phillips set a March 20,
5 2013 deadline for consummation of the settlement agreement, and
6 there is no indication that there has been any movement on the
7 issue in the last month.

8 The Court hereby requests supplemental briefing on the issues
9 discussed above from Travelers and Centex. Specifically, Travelers
10 and Centex shall:

- 11 • Provide the Court with a succinct summary of all litigation
12 between Travelers and Centex currently pending in California
13 state and federal courts. This summary shall include: (1)
14 the identity of the court before which each action is
15 pending, (2) the case number, (3) the underlying
16 construction defect actions involved, (4) a description of
17 the claims and counterclaims asserted by Travelers and
18 Centex in each of the actions, and (5) an assessment of the
19 procedural posture of each case (e.g., have the parties
20 completed discovery, filed dispositive motions, etc.).
- 21 • Advise the Court on their position on the consolidation of
22 some or all of the federal litigation between Travelers and
23 Centex, as well as whether any of the cases currently
24 pending before the Court should be stayed in whole or in
25 part.
- 26 • Advise the Court on how the relation of Case Numbers 11-
27 3638-SC, 12-00371-SC, and 13-00088-SC affects their pending
28 motions to dismiss and strike, if at all. The parties shall

1 also advise the Court on how consolidation of these actions
2 would affect their pending motions.

- 3 • Update the Court on the status of their settlement
4 negotiations in Case Number 12-00496 and address whether
5 they would be amenable to transferring that case to this
6 Court for consolidation with the Case Numbers 11-3638-SC,
7 12-00371-SC, and 13-00088-SC.
- 8 • Identify any prior orders issued by any court that addressed
9 the contention that any of the claims or counterclaims
10 asserted in Case Numbers 11-3638-SC, 12-00371-SC, and 13-
11 00088-SC are duplicative of claims asserted in any other
12 action. The parties shall provide docket and page numbers
13 for each reference.
- 14 • Suggest trial dates and other relevant case management dates
15 for each of the cases currently pending before the Court and
16 address whether consolidation or a full or partial stay
17 would result in an undue delay.

18 The other parties to these actions, including Newmeyer & Dillion,
19 RGL Inc., and RGL Forensics, are not required to submit
20 supplemental briefing, but may do so if they wish. Each party's
21 brief shall not exceed twenty (20) pages and shall be submitted
22 within ten (10) days of the signature date of this Order.

23
24 IT IS SO ORDERED.

25
26 Dated: April 25, 2013


27 UNITED STATES DISTRICT JUDGE