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5 Attorneys for Defendant and Cross-Complainant,  
 ADMIRAL RISK INSURANCE SERVICES dba  
 6 ADMIRAL INSURANCE COMPANY

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10 K.O. UNDERGROUND CONSTRUCTION, INC.,  
 a California corporation, KAREN M. OGANDO,  
 11 an individual; and JOSEPH E. OGANDO, an  
 individual,

Case No.: 3:13-cv-03878-RS

**STIPULATION AND  
 [PROPOSED] ORDER FOR  
 LEAVE TO FILE THIRD-  
 PARTY COMPLAINT**

12 Plaintiffs,

13 v.

14 ADMIRAL RISK INSURANCE SERVICES,  
 15 INC., a Delaware corporation, dba ADMIRAL  
 INSURANCE COMPANY, INC.; ARCH  
 16 SPECIALTY INSURANCE AGENCY, INC., a  
 Missouri corporation, dba ARCH SPECIALTY  
 17 INSURANCE COMPANY; and DOES 1 through  
 100, inclusive;

18 Defendants.

19 ADMIRAL RISK INSURANCE SERVICES,  
 INC., a Delaware corporation, dba ADMIRAL  
 20 INSURANCE COMPANY, INC.,

21 Cross-Complainant,

22 v.

23 ARCH SPECIALTY INSURANCE AGENCY,  
 INC., a Missouri corporation, dba ARCH  
 24 SPECIALTY INSURANCE COMPANY, and  
 ROES 1 through 50, inclusive;

25 Cross-Defendants.

1 ADMIRAL RISK INSURANCE SERVICES,  
2 INC., a Delaware corporation, dba ADMIRAL  
3 INSURANCE COMPANY, INC.,

4 Third-Party-Complainant,

5 v.

6 FIREMAN'S FUND INSURANCE COMPANY, a  
7 California corporation, and MOES 1 through 50,  
8 inclusive;

9 Third-Party-Defendants.

10 Plaintiffs K.O. UNDERGROUND CONSTRUCTION, INC., KAREN M.  
11 OGANDO, and JOSEPH E. OGANDO (collectively "Plaintiffs"), and defendants  
12 ADMIRAL RISK INSURANCE SERVICES, INC., dba ADMIRAL INSURANCE  
13 COMPANY, INC. ("Admiral") and ARCH SPECIALTY INSURANCE AGENCY, INC.,  
14 dba ARCH SPECIALTY INSURANCE COMPANY ("Arch"), ("the Parties"), by and  
15 through their respective attorneys, hereby stipulate as follows:

16 1. As part of the Parties' ongoing settlement negotiations, Admiral and Arch  
17 have determined that global settlement in the above action cannot be reached unless and  
18 until all insurance carriers with a potential insuring obligation to the Plaintiffs for the claims  
19 alleged in Plaintiffs' complaint are made a party to this action.

20 2. Admiral and Arch have determined that FIREMAN'S FUND INSURANCE  
21 COMPANY ("Fireman's") insured plaintiff, K.O. UNDERGROUND CONSTRUCTION,  
22 INC. ("KO"), for those sums which KO should become liable to pay as damages because of  
23 "bodily injury" or "property damage" to which this insurance applies under commercial  
24 general liability policy numbers: LIC000033, effective 5/6/2006 to 5/6/2007; LIC000168,  
25 effective 5/6/2007 to 5/6/2008; LIC1000361, effective 5/6/2008 to 5/6/2009; LIC1000517,  
26 effective 5/6/2009 to 5/6/2010; and LIC1000620, effective 5/6/2010 to 5/6/2011.

27 3. Admiral and Arch agree that some or all of Plaintiffs' claims are potentially  
28 covered under one or more of the above policies of insurance issued by Fireman's.

4. Admiral and Arch agree that Fireman's is an indispensable party to this  
action and, further, the Parties' claims cannot be resolved unless and until Fireman's is made

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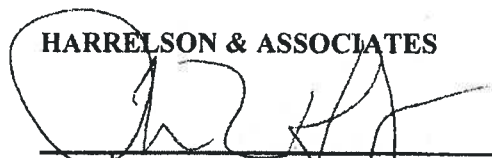
a party to the action.

3. Plaintiffs having no objection to said stipulation.

4. Accordingly, the Parties stipulate that leave of Court should be granted for Admiral to file and serve the Third-Party Complaint, attached hereto as Exhibit A.

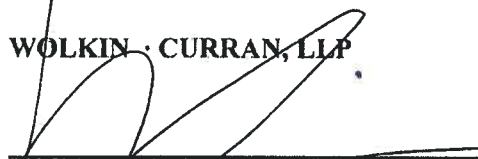
**IT IS SO STIPULATED.**

Dated: 11/3/2013

**HARRELSON & ASSOCIATES**  


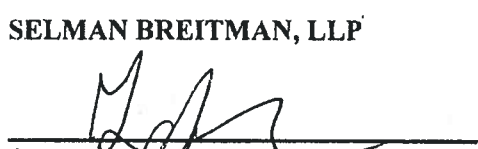
Thomas M. Harrelson, Attorney for  
Plaintiffs K.O. UNDERGROUND  
CONSTRUCTION, INC., KAREN M.  
OGANDO and JOSEPH E. OGANDO

Dated: 11/6/13

**WOLKIN · CURRAN, LLP**  


Brandt L. Wolk, Attorneys for  
Defendant ADMIRAL RISK INSURANCE  
SERVICES dba ADMIRAL INSURANCE  
COMPANY

Dated: 11/5/13

**SELMAN BREITMAN, LLP**  


Gregory J. Neyman, Attorneys for  
Defendant ARCH SPECIALTY INSURANCE  
COMPANY

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**[PROPOSED] ORDER**

Defendant and Cross-Claimant ADMIRAL RISK INSURANCE SERVICES, INC., dba ADMIRAL INSURANCE COMPANY, INC., is granted leave to file and serve the Third-Party Complaint of Admiral Risk Insurance Services dba Admiral Insurance Company Against Fireman’s Fund Insurance Company for: (1) Declaratory Relief Re Duty To Defend; (2) Declaratory Relief Re Duty To Indemnify; (3) Equitable Contribution Re Defense Costs; (4) Equitable Contribution Re Indemnity; And (5) Subrogation, attached hereto as Exhibit A.

**IT IS SO ORDERED.**

Dated: 11/7/13


  
The Honorable Judge Richard Seeborg,  
UNITED STATES DISTRICT JUDGE

EXHIBIT A

EXHIBIT A

1 Brandt L. Wolkin, Esq., SBN 112220  
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5 Attorneys for Defendant, Cross-Complainant and  
Third-Party Claimant ADMIRAL RISK INSURANCE  
6 SERVICES dba ADMIRAL INSURANCE COMPANY

7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 K.O. UNDERGROUND CONSTRUCTION, INC.,  
a California corporation, KAREN M. OGANDO,  
11 an individual; and JOSEPH E. OGANDO, an  
individual,

12 Plaintiffs,

13 v.

14 ADMIRAL RISK INSURANCE SERVICES,  
15 INC., a Delaware corporation, dba ADMIRAL  
INSURANCE COMPANY, INC.; ARCH  
16 SPECIALTY INSURANCE AGENCY, INC., a  
Missouri corporation, dba ARCH SPECIALTY  
17 INSURANCE COMPANY; and DOES 1 through  
100, inclusive;

18 Defendants.

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21 ADMIRAL RISK INSURANCE SERVICES,  
22 INC., a Delaware corporation, dba ADMIRAL  
INSURANCE COMPANY, INC.,

23 Cross-Complainant,

24 v.

25 ARCH SPECIALTY INSURANCE AGENCY,  
26 INC., a Missouri corporation, dba ARCH  
SPECIALTY INSURANCE COMPANY, and  
27 ROES 1 through 50, inclusive;

28 Cross-Defendants.

Case No.: 3:13-cv-03878-RS

**THIRD-PARTY COMPLAINT  
OF ADMIRAL RISK  
INSURANCE SERVICES dba  
ADMIRAL INSURANCE  
COMPANY AGAINST  
FIREMAN'S FUND INSURANCE  
COMPANY FOR:**

**(1) DECLARATORY RELIEF  
RE DUTY TO DEFEND;  
(2) DECLARATORY RELIEF  
RE DUTY TO INDEMNIFY;  
(3) EQUITABLE  
CONTRIBUTION RE DEFENSE  
COSTS;  
(4) EQUITABLE  
CONTRIBUTION RE  
INDEMNITY; and  
(5) SUBROGATION**

1 ADMIRAL RISK INSURANCE SERVICES,  
2 INC., a Delaware corporation, dba ADMIRAL  
3 INSURANCE COMPANY, INC.,

4 Third-Party-Complainant,

5 v.

6 FIREMAN'S FUND INSURANCE COMPANY, a  
7 California corporation, and MOES 1 through 50,  
8 inclusive;

9 Third-Party Defendants.

10 Third-party complainant ADMIRAL RISK INSURANCE SERVICES dba  
11 ADMIRAL INSURANCE COMPANY ("Admiral" or "Third-Party Claimant") is informed  
12 and believes, and based on such information and belief alleges as its Third-Party Complaint  
13 against Third Party Defendants, as follows:

14 **FEDERAL JURISDICTION AND VENUE**

15 1. The Court has subject matter jurisdiction over this third-party complaint  
16 under 28 U.S.C. section 1367, because the claims are related to the original claim against  
17 Admiral and form part of the same case or controversy under Article III of the United States  
18 Constitution. The Court has personal jurisdiction over Third-Party Defendant FIREMAN'S  
19 FUND INSURANCE COMPANY ("Fireman's") because its principal place of business is  
20 in Novato, California.

21 2. This Court has original jurisdiction over this action because, pursuant to 28  
22 U.S.C. section 1332, there is complete diversity of citizenship between the plaintiff and  
23 defendants in the original claim, and the amount in controversy exceeds \$75,000.

24 3. Defendant and cross-defendant ARCH SPECIALTY INSURANCE  
25 AGENCY, INC. ("Arch"), removed the original complaint to the Northern District by notice  
26 dated August 20, 2013.

27 4. Venue is proper in the Northern District of California, because a substantial  
28 part of the events and omissions giving rise to Admiral's claims and the claims of the  
Plaintiff occurred in Napa County, California. Further, Third-Party Claimant is informed  
and believes that the policies of insurance at issue herein were placed by a broker located in

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1 the county of Alameda in the State of California, and all premiums for said polices were  
2 paid in the county of Alameda.

3 **PARTIES**

4 5. Third-Party Claimant Admiral is a corporation organized, incorporated and  
5 existing under the laws of the State of Delaware, with its principal place of business in  
6 Cherry Hill, New Jersey. Admiral is, and at all times mentioned herein was, qualified and  
7 authorized to transact business as a surety in the State of California.

8 6. Third-Party Defendant Fireman's, is, and at all times mentioned in herein  
9 was, a corporation organized and existing under the laws of the State of California, with its  
10 principal place of business in Novato, California.

11 7. The true names and capacities of the fictitiously named Third-Party  
12 Defendants MOES 1 through 50 are unknown to Admiral at this time. Admiral will, with  
13 leave of Court, amend this Third-Party Complaint to set forth the true names and capacities  
14 of such fictitiously named Third-Party Defendants when they have been ascertained. Each  
15 of the fictitiously named Third-Party Defendants is responsible in some manner for the acts,  
16 occurrences and damages hereinafter alleged.

17 8. As used herein, the term "Third-Party Defendants" shall include, jointly and  
18 severally, each of the named third-party defendants, including Fireman's and each of the  
19 MOES.

20 9. As used herein, the term "Plaintiffs" shall include K.O. UNDERGROUND  
21 CONSTRUCTION, INC., a California corporation; Karen M. Ogando, an individual; and  
22 Joseph E. Ogando, an individual.

23 10. At all times mentioned in this Third-Party Complaint, each of the Third-Party  
24 Defendants was the agent, servant, employee, representative, subsidiary, affiliate, partner,  
25 member, or associate of one or more of the other Third-Party Defendants, and all of the  
26 things alleged to have been done by Third-Party Defendants were done in the course and  
27 scope of that relationship and with the knowledge and consent of their principals, employers,  
28 owners, superiors, affiliates, masters, parent corporations, partners, members, associates or



1 representatives, except as is otherwise specifically alleged within this Third-Party  
2 Complaint.

3 **THE POLICIES**

4 11. Third-Party Claimant insured plaintiff, K.O. UNDERGROUND  
5 CONSTRUCTION, INC. (“KO”), for those sums which KO should become liable to pay as  
6 damages because of “bodily injury” or “property damage” to which this insurance applied  
7 under commercial general liability policy numbers A02AG3549-01, effective 5/6/2002 to  
8 5/6/2003 and A03AG16997-02, effective 5/6/2003 to 5/6/2004 (“Admiral Policies”).

9 12. Admiral is informed and believes that Defendant and Cross-Defendant Arch  
10 insured the Plaintiffs and/or KO for those sums which KO should become liable to pay as  
11 damages because of “bodily injury” or “property damage” to which this insurance applies  
12 under commercial general liability policy numbers 39PCGL001463, effective 5/6/2004 to  
13 5/6/2005 and 39CGL02165-00, effective 5/6/2005 to 5/6/2006 (“Arch Policies”).

14 13. Admiral is informed and believes that Third-Party Defendant Fireman’s  
15 insured the Plaintiffs and/or KO for those sums which KO should become liable to pay as  
16 damages because of “bodily injury” or “property damage” to which this insurance applies  
17 under commercial general liability policy numbers: LIC000033, effective 5/6/2006 to  
18 5/6/2007; LIC000168, effective 5/6/2007 to 5/6/2008; LIC1000361, effective 5/6/2008 to  
19 5/6/2009; LIC1000517, effective 5/6/2009 to 5/6/2010; and LIC1000620, effective 5/6/2010  
20 to 5/6/2011.

21 **GENERAL ALLEGATIONS**

22 14. On July 10, 2013, Plaintiffs filed the original complaint in this action for  
23 breach of insurance contract [duty to defend], breach of the covenant of good faith and fair  
24 dealing, negligence and declaratory relief against defendant and Third-Party Claimant,  
25 Admiral, and against defendant and cross-defendant Arch arising out of the alleged failure  
26 of both insurers to reimburse Plaintiffs for sums paid to their personal counsel in defense of  
27 an underlying construction defect action entitled *Olympus-Calistoga, LLC, et al. v. Taisei*

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1 *Construction Corp., et al.*, Napa County Superior Court case number 26-40553 and the  
2 related cross-action (“Underlying Action”).

3 15. In their original complaint, Plaintiffs allege that the Underlying Action was a  
4 construction defect action filed on December 27, 2007 by Olympus-Calistoga, LLC, and two  
5 other Olympus entities (collectively “Olympus”), against Taisei Construction Corporation  
6 (“Taisei”) in Napa County Superior Court alleging, *inter alia*, claims for property damage,  
7 bodily injury and loss of use, including lost rents, arising out of the negligent construction of  
8 a resort and spa in Napa County consisting of six owner's lodges, 46 guest lodges, a spa, a  
9 restaurant, a wine cave and a gym (the “Project”). As part of the Underlying Action, Taisei  
10 cross-claimed against various sub-contractors, including KO, alleging that they were  
11 responsible, in whole or in part, for the damages alleged in the underlying construction  
12 defect complaint.

13 16. Third-Party Claimant is informed and believes that KO supplied and fused  
14 gas pipes for the Project on a time-and-materials basis, with invoices dating from September  
15 of 2003 to September of 2005. The final Notice of Completion for the Project was dated  
16 May 24, 2004.

17 17. Third-Party Claimant is informed and believes that KO tendered its defense  
18 in the Underlying Action to Admiral’s surplus lines broker on or about November 3, 2010.  
19 A notice of claim was then forwarded to Admiral on or about November 10, 2010.

20 18. Third-Party Claimant agreed to defend KO in the Underlying Action under a  
21 full reservation of rights. Admiral incurred \$119,594.23 in defense KO in the Underlying  
22 Action and paid \$25,000 settlement of the claims against KO.

23 19. In addition to the above sums expended in defense and indemnity of KO by  
24 Admiral, Plaintiffs are claiming a right to reimbursement of an additional \$209,451.67 in  
25 attorney fees and costs incurred in defense of the Underlying Action, as well as other  
26 compensatory damages as alleged in Plaintiffs’ original action.

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1 34. Third-Party Defendants have improperly denied any obligation to defend KO.

2 35. Admiral paid defense fees and costs in connection with Admiral’s defense of  
3 KO in the Underlying Action in excess of its equitable share.

4 36. Admiral is entitled to reimbursement for an equitable share of the defense  
5 costs which have been and will be incurred by Admiral in connection with the Underlying  
6 Action and which should have been paid by Third-Party Defendants.

7 **FOURTH CAUSE OF ACTION**

8 **(Equitable Contribution Against All Third-Party Defendants Re Indemnity)**

9 37. Admiral re-alleges and incorporates by reference paragraphs 1 through 36  
10 above as though fully set forth herein.

11 38. Third-Party Defendants, and each of them, are obligated to indemnify KO for  
12 liability for property damage in the Underlying Action resulting from work performed on the  
13 Project by KO, referenced above.

14 39. Third-Party Defendants, and each of them, have an obligation to contribute to  
15 the indemnity of KO on an equitable basis in connection with the Underlying Action. Third-  
16 Party Defendants, and each of them, are therefore obligated, under principles of equity, to  
17 reimburse Admiral for the indemnity amount Admiral inequitably incurred on behalf of KO  
18 in the Underlying Action as a result Third-Party Defendants’ failure to contribute their  
19 equitable share.

20 **FIFTH CAUSE OF ACTION**

21 **(Equitable Subrogation Against All Third-Party Defendants)**

22 40. Admiral re-alleges and incorporates by reference paragraphs 1 through 39  
23 above as though fully set forth herein.

24 41. As an alternative to the allegations in the Third and Fourth Causes of Action  
25 stated above, Admiral alleges that it is entitled to equitable subrogation from Third-Party  
26 Defendants.

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1           3.       On the Third Cause of Action, for an award in monetary damages owed by  
2 Third-Party Defendants based on their share of the fees, costs and expenses Admiral  
3 incurred in connection with the defense of KO in the Underlying Action, the amount of  
4 which is to be determined at trial;

5           4.       On the Fourth Cause of Action, for an award in monetary damages owed by  
6 Third-Party Defendants based on their share of the indemnity paid by Admiral in connection  
7 with the defense of KO in the Underlying Action, the amount of which is to be determined  
8 at trial;

9           5.       On the Fifth Cause of Action, for an award in monetary damages owed by  
10 Third-Party Defendants consisting of the fees, costs and expenses Admiral incurred in  
11 connection with the defense of KO in the Underlying Action, the amount of which is to be  
12 determined at trial;

13           6.       For other general damages according to proof;

14           7.       For pre and post-judgment interest as provided by law;

15           8.       For costs of suit herein; and

16           9.       For such other relief as the Court deems just and proper.

WOLKIN · CURRAN, LLP

17 Dated: November 7, 2013

*/s/ Dawn A. Silberstein*

18  
19 By: \_\_\_\_\_

Brandt L. Wolkin  
Dawn A. Silberstein

20  
21 Attorneys for Defendant, Cross-  
22 Complainant and Third-Party Claimant  
23 **ADMIRAL RISK INSURANCE**  
**SERVICES dba ADMIRAL**  
**INSURANCE COMPANY**