

1 Terrence R. McInnis (#155416)  
 (tmcinnis@rdblaw.com)  
 2 Monique M. Fuentes (#205501)  
 (mfuentes@rdblaw.com)  
 3 Siavash Daniel Rashtian (#228644)  
 (drashtian@rdblaw.com)  
 4 TROUTMAN SANDERS LLP  
 5 5 Park Plaza, Suite 1200  
 Irvine, California 92614-8529  
 Telephone: (949) 622-2700  
 6 Facsimile: (949) 622-2739

7 *Attorneys for Defendant*  
*Executive Risk Specialty Insurance Company*

8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA

10  
 11 LENS CRAFTERS, INC., and EYEXAM OF  
 12 CALIFORNIA, INC.,

No. C07-02853 SBA

[Related Case No. C 04-01001 SBA]

13 Plaintiffs,

14 v.

**STIPULATION AND ~~PROPOSED~~  
 ORDER DISMISSING CERTAIN  
 CLAIMS WITH PREJUDICE**

15 LIBERTY MUTUAL FIRE INSURANCE  
 16 COMPANY; EXECUTIVE RISK SPECIALTY  
 17 INSURANCE COMPANY; UNITED STATES  
 18 FIRE INSURANCE COMPANY; MARKEL  
 AMERICAN INSURANCE COMPANY and  
 WESTCHESTER FIRE INSURANCE  
 COMPANY,

19 Defendants.

20  
 21 AND RELATED CROSS ACTIONS

22  
 23  
 24 Pursuant to Fed. R. Civ. P. 41(c), the remaining parties to this action hereby stipulate as  
 25 set forth below.

26 WHEREAS, on July 27, 2007, defendant/cross-claimant Markel American Insurance  
 27 Company ("Markel") filed a Cross-Complaint against Executive Risk Specialty Insurance  
 28 Company ("ERSIC") in this action;

1 WHEREAS, on September 4, 2007, defendant/cross-claimant ERSIC filed a Cross-  
2 Complaint Markel American Insurance Company ("Markel") in this action;

3 WHEREAS, Markel previously dismissed its Cross-Complaint against ERSIC without  
4 prejudice by stipulation of the parties;

5 WHEREAS, pursuant to the terms of a settlement reached between ERSIC and Markel,  
6 ERSIC has agreed to dismiss its Cross-Complaint against Markel *with prejudice*, and Markel has  
7 agreed to request that its dismissal of its Cross-Complaint against ERSIC be made *with prejudice*.

8 NOW THEREFORE, is it hereby STIPULATED by and between the remaining parties to  
9 the present action, through their attorneys of record, that:

- 10 • ERSIC's September 4, 2007 Cross-Complaint shall be DISMISSED *with prejudice*
- 11 as to Markel; and
- 12 • Markel's July 27, 2007 Cross-Complaint shall be DISMISSED *with prejudice* as
- 13 to ERSIC.

14 Respectfully submitted,

15  
16  
17 DATED: April 6, 2009

TROUTMAN SANDERS LLP

18  
19 By /s/ Terrence R. McInnis

20 Terrence R. McInnis  
21 Attorneys for Defendant  
22 EXECUTIVE RISK SPECIALTY INSURANCE  
23 COMPANY  
24  
25  
26  
27  
28

1 DATED: February 11, 2009

LONG & LEVIT LLP

2  
3 By Irene Yesowitch

4 Irene Yesowitch  
5 Attorneys for Defendant  
MARKEL AMERICAN INSURANCE COMPANY

6  
7 **ORDER**

8 Good cause appearing, IT IS HEREBY ORDERED that:

- 9 • ERSIC's September 4, 2007 Cross-Complaint is and shall be DISMISSED *with*
- 10 *prejudice* as to Markel; and
- 11 • Markel's July 27, 2007 Cross-Complaint is and shall be DISMISSED *with*
- 12 *prejudice* as to ERSIC.

13  
14 DATED: 4/6/09

15 Laundra B. Armstrong  
UNITED STATES DISTRICT JUDGE

16 C:\Documents and Settings\178\Local Settings\Temporary Internet Files\OLKFAEyemed\_ Stip and Proposed Order to dismiss Markel.DOC  
17 DRAFT 02/11/09 4:51 PM