

1 David H. Waters, CASB# 078512
 2 Alison F. Greene, CASB# 148309
 3 BURNHAM BROWN
 4 A Professional Law Corporation
 5 P.O. Box 119
 6 Oakland, California 94604
 7 ---
 8 1901 Harrison Street, 11th Floor
 9 Oakland, California 94612
 10 Telephone: (510) 444-6800
 11 Facsimile: (510) 835-6666
 12 Email: dwaters@burnhambrown.com
 13 agreene@burnhambrown.com

14 Attorneys for Defendant
 15 NAVIGATORS INSURANCE COMPANY

16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

14 JOHANNA FORMAN, and KENNETH
 15 SANDERS on behalf of the Bankruptcy
 16 Estate of Gary Morris,

16 Plaintiffs,

17 v.

18 NAVIGATORS INSURANCE COMPANY,
 19 and DOES 1 to 10, inclusive,

20 Defendants.

No. C08-04729 CW

**STIPULATION AND ORDER
 CONTINUING THE LAST DATE TO
 COMPLETE PRIVATE MEDIATION
 AS MODIFIED**

21
 22 Plaintiffs Johanna Forman and Kenneth Sanders (“Plaintiffs”), and defendant
 23 Navigators Insurance Company (“Navigators”), by and through their respective counsel of
 24 record, hereby stipulate and agree to the following:

- 25 1. WHEREAS this Court’s February 6, 2009, Case Management Order referred the
 26 parties to private mediation to be completed by May 4, 2009.
- 27 2. WHEREAS, Plaintiffs and Defendant previously stipulated to continue the last
 28 date to complete private mediation to July 6, 2009 and WHEREAS the Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

granted the parties' request.

3. WHEREAS, the last day to mediate was continued for two reasons. First, the parties disputed whether the attorney client and work product privilege applied to preclude production of certain portions of Navigators' claims file and certain portions of the files of underlying defense counsel for Gary Morris, and had met and conferred on that issue, and plaintiffs desired to bring a motion to compel both as to the production of those documents and as to whether or when Navigators was required to disclose if it intended to use certain defenses at trial. Second, Navigators intended to file its motion for summary judgment on the legal issue of the effect of the insured's discharge in bankruptcy before commencement of the trial of the underlying action on plaintiffs' claims for damages by reason of the subsequent entry of judgment in excess of Navigators' policy limit;

4. Plaintiffs' motion to compel discovery was heard on June 29, 2009 and Navigators has been ordered to produce the documents it claimed were attorney client privileged by July 15, 2009, after the current last date for completion of mediation of July 6, 2009.

5. Navigators filed its motion for summary judgment on the legal issue of the effect of the bankruptcy, which is pending for hearing on July 9, 2009.

6. Plaintiffs remain of their contention that a review of the documents previously withheld as privileged under the attorney client privilege is necessary for their preparation for trial as well as for mediation purposes.

7. Navigators remains in its belief that any mediation before the legal issue of the effect of the bankruptcy renders mediation premature, as well as ineffective.

///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Therefore, the parties request that this court's deadline to complete private mediation be extended to 45 days after the Court issues its decision on Navigators' motion for summary judgment.

DATED:

PILLSBURY & LEVINSON, LLP

REBECCA GREY
Attorneys for Plaintiffs
Johanna Foreman and Kenneth Sanders

DATED:

BURNHAM BROWN

DAVID H. WATERS

ORDER

The Court orders that the last day to complete mediation be continued to September 15, 2009.

7/15/09

DATED: _____



HONORABLE CLAUDIA WILKEN
U. S. DISTRICT COURT

951832