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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

MT. MCKINLEY INSURANCE COMPANY,
et al.,

Plaintiff,

v.

SWISS REINSURANCE AMERICA
CORPORATION,

Defendant.

CASE NO. C09-03857-CW

The Honorable Claudia Wilken

**STIPULATION AND ORDER TO [a]
FURTHER EXTEND DEADLINE FOR
COMPLETION OF CERTAIN LIMITED
FACT DISCOVERY AND [b] TO EXTEND
DEADLINE FOR HEARING ALL CASE-
DISPOSITIVE MOTIONS**

The parties, Plaintiffs Mt. McKinley Insurance Company and Everest Reinsurance Company (collectively “Plaintiffs”) and Defendant Swiss Reinsurance America Corporation (“Defendant”), by and through their respective counsel of record, hereby stipulate as follows and request that the Court enter an order (a) extending the deadline for completion of certain limited fact discovery as described herein from August 13, 2010 to September 30, 2010 and (b) extending the deadline for hearing all case-dispositive motions from September 30, 2010 to December 2, 2010:

1 1. On April 6, 2010, the Court held an initial Case Management Conference (“CMC”)
2 in this case and entered a Minute Order and Case Management Order setting the deadline for
3 completion of fact discovery for July 23, 2010 and the last day to hear all case-dispositive motions
4 for September 30, 2010 (Dkt. No. 42) in accordance with the parties’ proposal as set forth in the
5 parties’ Updated Joint Case Management Statement (Dkt. No. 41). The parties’ proposal of
6 pretrial deadlines, including July 23, 2010 as the cut-off for fact discovery and September 30,
7 2010 as the last day to hear all case-dispositive motions, was based on a good-faith belief that the
8 parties would be able to negotiate fact and evidentiary stipulations upon which cross-motions for
9 summary judgment may be filed.

10 2. Following the April 6, 2010 CMC, the parties have in good faith met and conferred
11 telephonically and over e-mail to discuss proposed fact and evidentiary stipulations on which their
12 cross-motions for summary judgment may be based, but later agreed to defer further discussion of
13 their stipulations until after the early neutral evaluation (“ENE”) in this case, which took place on
14 June 30, 2010.

15 3. As a result, by Stipulation and Proposed Order, the parties jointly requested an
16 extension of the deadline to complete fact discovery from July 23, 2010 to August 13, 2010. (Dkt.
17 No. 43.) The Court’s order granting the parties’ request was entered on June 22, 2010. (Dkt. No.
18 44.)

19 4. Thereafter, the parties resumed their negotiations and discussion of proposed fact
20 and evidentiary stipulations. The parties ultimately entered a fact stipulation which was executed
21 by both parties on August 7, 2010. The parties also reached an agreement in principle with respect
22 to an evidentiary stipulation, which they expect to execute within the next few days.

23 5. However, the parties were unable to reach agreement on a narrow set of factual and
24 evidentiary issues. The parties now stipulate to and request a further extension of the deadline to
25 complete certain limited fact discovery as to the following narrow issues only, from August 13,
26 2010 to September 30, 2010, as follows:

27 a. Plaintiffs may propound one set of third-party document requests each to
28 The Herrick Corporation (“Herrick”), Herrick’s insurance broker Integro Insurance Brokers, and

1 the issuers and brokers of each of the policies described herein, for the limited purpose of seeking:
2 (a) true, correct, and complete copies of primary, excess, and/or umbrella general liability
3 insurance policies issued to Herrick between 1968 and 1989, *other than* the policies issued by
4 Plaintiffs or Defendant; and (b) tender or notice letters to and denial, disclaimer, reservation of
5 rights, and other coverage positions letters from such general liability insurers, *other than*
6 Plaintiffs or Defendant, but only to the extent that such communications specifically and directly
7 relate to tender of the underlying Strachan Action; and

8 b. Defendant may propound one set of third-party discovery requests each to
9 Aetna Insurance Company, Industrial Underwriters Insurance Company, and their successors,
10 claim administrators, or assigns, for the limited purpose of seeking: (a) true, correct, and complete
11 copies of the policies issued to Herrick by these two insurers; and (b) documents or testimony
12 confirming the allocation of these two insurers' joint settlement payment in the Strachan Action as
13 between their respective policies.

14 6. Both parties further stipulate and agree that the foregoing third-party discovery
15 requests must be served on or before August 20, 2010, and that each party will submit its draft
16 discovery requests to opposing counsel for approval as to scope before such requests are served on
17 any third party. The parties further stipulate and agree that by exchanging draft subpoenas
18 commanding the production of documents or the inspection of premises before trial ("document
19 subpoenas") with opposing counsel and obtaining approval as to scope before such requests are
20 served on any third party, the provision of Federal Rule of Civil Procedure 45(b)(1) requiring
21 notice of a document subpoena to be served on the other party to the litigation before service on
22 the third party will have been satisfied, and that no further advance notice of such document
23 subpoenas need be served on the other party before service of the subpoena on the third party.
24 The parties will provide each other with courtesy copies by e-mail of the proofs of service of their
25 subpoenas promptly after service is made. The parties further stipulate and agree that no
26 additional discovery other than that described in paragraph 5 will be permitted.

27 7. In addition, the parties also believe that a continuation of the last day to hear all
28 case-dispositive motions from September 30, 2010 to December 2, 2010, will provide the parties

1 with sufficient time to complete the limited additional fact discovery as described herein to
2 support their cross-motions for summary judgment. In accordance with the briefing schedule set
3 forth in the Court's Case Management Order (Dkt. No. 42), if the parties file cross-motions for
4 summary judgment, Plaintiffs' opening brief will be filed six weeks before December 2, 2010;
5 Defendant's opposition/cross-motion (contained within a single brief) will be due 2 weeks later;
6 Plaintiffs' opposition/reply (contained in a single brief) will be due one week later; and
7 Defendant's sur-reply will be due 1 week thereafter.

8 8. The parties do not believe that an extension or continuation of any other pretrial or
9 trial deadlines are necessary. The parties believe that the brief extensions requested will not
10 interfere with, but will actually promote, the efficient resolution of this case.

11 9. For the reasons set forth above, the parties hereby stipulate, and respectfully
12 request that the Court grant their request to (a) extend the deadline to complete certain limited fact
13 discovery as described in paragraphs 5 and 6, above, from August 13, 2010 to September 30, 2010
14 and (b) extend the deadline for hearing all case-dispositive motions from September 30, 2010 to
15 December 2, 2010.

16 DATED: August 9, 2010

CROWELL & MORING LLP

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By: /s/ Steven P. Rice

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Steven P. Rice

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Queena Mewers

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Attorneys for Plaintiffs

MT. MCKINLEY INSURANCE COMPANY and
EVEREST REINSURANCE COMPANY

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DATED: August 7, 2010

CRAIG & WINKELMAN LLP

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By: /s/ Robin D. Craig

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Robin D. Craig

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Attorneys for Defendant

SWISS REINSURANCE AMERICA
CORPORATION

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PURSUANT TO THE STIPULATION SET FORTH ABOVE, IT IS SO ORDERED that the deadline for the parties to complete certain limited fact discovery as described in paragraph 5 and subject to the conditions set forth in paragraph 6 of the parties' Stipulation as set forth above is extended from August 13, 2010 to September 30, 2010.

PURSUANT TO THE STIPULATION SET FORTH ABOVE, IT IS FURTHER ORDERED that the deadline to hear all case-dispositive motions is extended from September 30, 2010 to December 2, 2010, with Plaintiffs' opening brief filed six weeks before December 2, 2010; Defendant's opposition/cross-motion (contained within a single brief) filed 2 weeks later; Plaintiffs' opposition/reply (contained in a single brief) filed one week later; and Defendant's sur-reply filed 1 week thereafter. **This may necessitate a continuance of the trial date.**

DATED: 8/13/2010



CLAUDIA WILKEN
United States District Judge