

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

(Counsel listed on next page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA;
AMERICAN INTERNATIONAL
UNDERWRITERS INSURANCE
COMPANY AND AMERICAN
INTERNATIONAL SPECIALTY LINES
INSURANCE COMPANY,

Plaintiffs,

v.

SEAGATE TECHNOLOGY, INC.,

Defendant.

SEAGATE TECHNOLOGY LLC.,

Counterclaimant,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA;
AMERICAN INTERNATIONAL
UNDERWRITERS INSURANCE
COMPANY AND AMERICAN
INTERNATIONAL SPECIALTY LINES
INSURANCE COMPANY,

Counterclaim Defendants.

CASE NO: C 04-01593 JW

**STIPULATION REGARDING
AMOUNT OF PREJUDGMENT
INTEREST OWED BY AISLIC
ACCORDING TO JULY 9, 2009
ORDER**

Magistrate Judge Howard R. Lloyd

1 CHARLES A. REID, III (SBN 221306)
MICHAEL P. PULLIAM (SBN 215435)
2 DRINKER BIDDLE & REATH LLP
50 Fremont Street, 20th Floor
3 San Francisco, California 94105-2235
Telephone: 415-591-7500
4 Facsimile: 415-591-7510

5 *Appearing Pro Hac Vice*
WILLIAM T. CORBETT, JR.
6 MARK D. SHERIDAN
DRINKER BIDDLE & REATH LLP
7 500 Campus Drive
Florham Park, New Jersey 07932-1047
8 Telephone: 973-360-1100
Facsimile: 973-360-9831

9 Attorneys for Plaintiffs and Counterclaim Defendant
10 NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA and AMERICAN
INTERNATIONAL UNDERWRITERS INSURANCE COMPANY
11

12 ARCHIE S. ROBINSON (SBN 34789)
JOSHUA J. BORGER (SBN 231951)
13 ROBINSON & WOOD, INC.
227 North First Street
14 San Jose, CA 95113
Telephone: 408-298-7120
15 Facsimile: 408-298-0477

16 Attorneys for Plaintiff and Counterclaim Defendant
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY
17

18 ROBERT E. FREITAS (STATE BAR NO. 80948)
DANIEL J. WEINBERG (STATE BAR NO. 227159)
19 ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
20 Menlo Park, CA 94025
Telephone: 650-614-7400
21 Facsimile: 650-614-7401

22 Attorneys for Defendant and Counterclaimant
SEAGATE TECHNOLOGY LLC
23
24
25
26
27
28

1 **STIPULATION**

2 **WHEREAS**, plaintiffs National Union Fire Insurance Company of Pittsburgh, PA
3 (“National Union”), American International Underwriters Insurance Company (“AIU”), and
4 American International Specialty Lines Insurance Company (“AISLIC”) (together “Plaintiffs”)
5 filed Declaratory Judgment claims against defendant Seagate Technology LLC (“Seagate”)
6 seeking a declaration that they owed no duty to defend or indemnify Seagate in *Convolve, Inc., et*
7 *al. v. Seagate Technology LLC, et al*, Case No. 00 Civ. 5141 (S.D.N.Y.) (the “Underlying
8 Action”) (Docket Item No. 1);

9 **WHEREAS**, Seagate filed Counterclaims for Relief against Plaintiffs for Breach of
10 Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, and Declaratory
11 Judgment that Plaintiffs are obligated to defend Seagate in the Underlying Action (Docket Item
12 No. 12);

13 **WHEREAS**, AISLIC filed a Motion for a Stay of Seagate’s First Cause of Action for
14 Breach of Contract (Docket Item No. 289) and Seagate filed a Motion for Summary Judgment of
15 Breach of Contract Against AISLIC and for Prejudgment Interest (Docket Item No. 296);

16 **WHEREAS**, on July 9, 2009, the Court issued an Order denying AISLIC’s motion for a
17 stay, granting Seagate’s motion for summary judgment as to its breach of contract counterclaim
18 against AISLIC, granting in part and denying in part Seagate’s motion for prejudgment interest,
19 and referring the parties to Magistrate Judge Lloyd for a determination of prejudgment interest
20 damages (Docket Item No. 306);

21 **WHEREAS**, the July 9, 2009 Order provides that prejudgment interest is to be calculated
22 from the date of each legal bill received by Seagate in connection with its defense of the
23 Underlying Action;

24 **WHEREAS**, based on the methodology for calculating prejudgment interest as set forth
25 in the Court’s July 9, 2009 Order, the amount of prejudgment interest owed by AISLIC is
26 \$3,128,026.46;

27 **WHEREAS**, AISLIC disagrees that it is liable for breach of contract, prejudgment
28 interest, and the correctness of the Court’s ruling regarding the method used to calculate

1 prejudgment interest, and intends to pursue an appeal of the Court's rulings as to these and other
2 issues;

3 **WHEREAS**, in order to avoid further litigation in this matter and to allow the timely
4 pursuit of an appeal, and preserving all appellate rights in this matter, AISLIC agrees to stipulate
5 solely to the amount of prejudgment interest based upon the methodology set forth in the Court's
6 July 9, 2009 Order;

7 **NOW, THEREFORE**, pursuant to Civil L.R. 7-12, it is hereby stipulated and agreed, by
8 and among Plaintiffs and Seagate, as follows:

- 9 1. Pursuant to the Court's July 9, 2009 Order, the amount of prejudgment interest to
10 be paid by AISLIC to Seagate is \$3,128,026.46;
- 11 2. This stipulation does not, and shall not be construed to, alter, eliminate or
12 otherwise affect any appellate rights the parties have, had or may have in the
13 future, and shall not be used by any party to argue that such appellate rights have
14 been impaired or otherwise affected.

15
16 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

17 Dated: March 10, 2010

ORRICK, HERRINGTON & SUTCLIFFE, LLP

18
19 /s/

20 _____
Daniel J. Weinberg
Attorneys for Defendant and Counterclaimant
21 Seagate Technology LLC
22
23
24
25
26
27
28

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

Dated: March 10, 2010

DRINKER, BIDDLE & REATH, LLP

/s/

Charles A. Reid, III
Attorneys for Plaintiffs and Counter-defendants
National Union Fire Insurance Company of
Pittsburgh, PA and American International
Underwriters Insurance Company

Dated: March 10, 2010

ROBINSON & WOOD, INC.

/s/

Archie S. Robinson
Attorneys for Plaintiffs and Counter-defendant
American International Specialty Lines
Insurance Company

IT IS SO ORDERED.

Dated: March 12, 2010



Howard R. Lloyd
United States Magistrate Judge