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

10
 11 FIREMAN'S FUND INSURANCE) CASE NO. C03-04406 JCS
 COMPANY, A California Corporation,)
 12)
 Plaintiff,)
 13)
 vs.)
 14)
 GENERAL REINSURANCE CORPORATION,)
 A Delaware Corporation,) [Civil Local Rule 7-14]
 15)
 Defendant.) Date: March 24, 2006
 16) Time: 9:30 a.m.
 17) Place: A, 15th Floor
 Judge: Hon. Joseph C. Spero
 18)

19 Defendant General Reinsurance Corporation ("Gen Re") submits the following Reply,
 20 requesting that the Court designate as "NOT FOR CITATION" its Findings & Conclusions
 21 (entered on August 5, 2005), Judgment (entered September 23, 2005), and Order Denying
 22 Motion to Amend (entered January 17, 2006), pursuant to this Court's discretionary power under
 23 Civil L.R. 7-14.

24 Gen Re's request is justified and appropriate under the circumstances and the law and is
 25 supported by one of the treatises upon which plaintiff Fireman's Fund Insurance Company
 26 (FFIC) itself relied at Trial. (See, Eugene Wolan, *Handbook of Reinsurance Law*, Section
 27 2.04[B], Aspen Law 2003, FFIC Appendix of Other Authorities, filed with FFIC's Opening
 28

1 Brief, May 6, 2005.)

2 While this Court’s decision may be collateral estoppel and res judicata as between these
3 parties as to similarly worded casualty facultative reinsurance certificates for the time period at
4 issue in the litigation, the rulings here have limited, if any, application to other reinsurance
5 disputes under other certificates or for other time periods.

6 In his treatise, Wolan explains that each reinsurance contract is based on a commercial
7 relationship, the particular language negotiated and used by those parties, and the business
8 purposes those parties sought to achieve. Wolan, supra, at 2-19. Whether a court in a dispute
9 between the parties will allow evidence of custom and usage will depend on whether the contract
10 is clear on its face and whether the court allows the introduction of parole evidence. *Id.*
11 Whether extrinsic evidence is allowed will also depend on whether it would tend to contradict or
12 vary the contractual language. *Id.*, 2-19, 2-20. Furthermore, even if custom and practice
13 evidence were allowed in a particular dispute over the interpretation of a particular certificate,
14 another factor will be whether those particular parties “had knowledge of the usage at the time
15 they made their contract.” *Id.*, at 2-21. And, as Wolan cautions: “It should always be borne in
16 mind, however, that whether the parties intended their contract to be read and construed with
17 reference to a particular custom is at root a question of fact . . .” *Id.*, at 2-22.

18 Therefore, the Court’s determinations in this case as to the contractual obligations of Gen
19 Re under certificates issued to Fireman’s Fund in the period 1969 to 1977 has little, if any,
20 precedential value to other reinsurers. Therefore, Gen Re respectfully requests that this Court
21 designate its Findings & Conclusions, Judgment, and Order as “NOT FOR CITATION.”

22 Respectfully submitted,

23 Dated: March 10, 2006

GORDON & REES LLP

24
25 By: 
26 Donald W. Rees
Sara M. Thorpe

27 Attorneys for Defendant GENERAL
28 REINSURANCE CORPORATION