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

11 MASCO CONTRACTORS
SERVICES WEST, INC., a
12 California corporation and COAST
INSULATION CONTRACTORS,
13 INC., a California corporation

14 Plaintiffs,

15 vs.

16 NEW HAMPSHIRE INSURANCE
COMPANY, a New Hampshire
17 Corporation, and NATIONAL
UNION FIRE INSURANCE
18 COMPANY OF PITTSBURGH,
PA., a Pennsylvania corporation

19 Defendants.
20

CASE NO.: 04-04183 MJJ

DECLARATION OF MARC S. HINES IN
SUPPORT OF THE PARTIES'
STIPULATION AND [PROPOSED]
ORDER CONTINUING SETTLEMENT
CONFERENCE, PRETRIAL
CONFERENCE, TRIAL DATE AND ALL
RELATED DATES

Settlement Conference: August, 2005
Pretrial Conference Date: Sept. 27, 2005
Trial Date: October 11, 2005

21 I, Marc S. Hines, hereby declare as follows:

22 1. I am an attorney at law duly licensed to practice before all courts of the
23 State of California and this District Court and am a partner in the law firm of Hines
24 Smith, attorneys of record for Plaintiffs herein. This declaration is made in support
25 of the parties' Stipulation for a continuance of the trial and all related dates in this
26 action and is being submitted in accordance with Civil Local Rule No. 6-2(a). I have
27 personal knowledge of the matters stated in this declaration and, if called upon to do
28 so, would competently testify to the facts stated herein.

- 1 -

DECL. OF HINES RE STIP TO CONTINUE TRIAL AND RELATED DATES
CASE NO. 04-04183 MJJ

1 2. This action involves alleged coverage disputes between Plaintiffs and
2 National Union arising out of the underlying construction defect action entitled
3 *Carneros Warehousing Joint Venture, et al., v. Cranston Steel Structures, Inc., et*
4 *al.*, Case Number 229440 filed in Sonoma County Superior Court (hereinafter the
5 “CD Case”). I am also the attorney of record for Plaintiffs herein as Cross-
6 Defendants in the CD Case.

7 3. I am informed and believe it is National Union’s position that it owes no
8 current obligation to defend or indemnify Plaintiffs in the CD Case on the grounds
9 that the National Union policy at issue in this action is an excess policy which does
10 not attach to any loss unless and until the limits of all underlying insurance available
11 to the insured is exhausted through payment of covered claims; that unexhausted
12 primary coverage remains available to Plaintiffs; and that it has not in any manner
13 acted in “bad faith” with respect to the handling of Plaintiffs’ tender of defense and
14 indemnity of the CD Case.

15 4. It is Plaintiffs’ position that its underlying insurance will be exhausted
16 in connection with the CD Case and that National Union has violated the covenant of
17 good faith and fair dealing by directing the outcome of the coverage issues through
18 defense counsel for the primary insurer.

19 5. The outcome of the CD Case will necessarily affect, and may resolve,
20 the outcome of this action. Moreover, trial in this action before trial of the CD Case
21 will be premature. Plaintiffs cannot ascertain the full extent of their alleged damages
22 in this case, if any, until the CD Case resolves.

23 6. The CD Case was originally set for trial in May, 2005 but has now been
24 continued to November 4, 2005 and it is estimated that trial in that case will last for 6
25 to 8 weeks.

26 7. On March 8, 2005, this Court, the Honorable Martin J. Jenkins,
27 presiding issued a pre-trial Order setting the following dates:

- 28 (1) A settlement conference for August 2005

- 1 (2) a pre-trial conference for September 27, 2005; and
- 2 (3) Trial for October 11, 2005; and
- 3 (4) Related discovery and motion cut-off dates

4 8. The parties to this action have been working together to determine
5 whether the CD Case, and derivatively this action, can be resolved. Specifically, in
6 April 2005, all parties to this action met in San Francisco, along with all other
7 insurers providing coverage to Plaintiffs in an effort to work out funding issues as it
8 respects potential settlement in the CD Case. While progress was made towards
9 resolving those issues which pertain to the potential settlement of the CD Case, and
10 particularly, funding of same, the parties were unable to completely resolve their
11 issues. Despite this fact, National Union and Plaintiffs agreed to continue their
12 efforts to resolve those issues.

13 9. A continuance of the trial and all related dates, including discovery and
14 motion cut-off dates in this action, will allow the parties to continue to focus their
15 efforts on the resolution of the CD Case and, depending on the outcome of the CD
16 Case, may render trial in this action unnecessary.

17 10. No other requests for continuances have been made in this action.

18 11. This Declaration is being submitted with the Stipulation in accordance
19 with Civil Local Rule No. 6-2(a).

20 I declare under penalty of perjury under the laws of the State of California the
21 foregoing is true and correct.

22 Executed this 31st day of June, 2005, at Costa Mesa, California.

23
24 
25 Marc S. Hines

1 PROOF OF SERVICE

2 I am employed in the County of Orange, State of California. I am over the age of 18 and
3 not a party to the within action. My business address is 3080 Bristol Street, Suite 540, Costa
4 Mesa, 92626.

5 On July 1, 2005, I served the foregoing document described as:

6 **DECLARATION OF MARC S. HINES IN SUPPORT OF PARTIES' STIPULATION AND
7 [PROPOSED] ORDER CONTINUING SETTLEMENT CONFERENCE, PRETRIAL
8 CONFERENCE, TRIAL DATE AND ALL RELATED DATES**

9 By placing the original a copy thereof enclosed in a sealed envelope, addressed as
10 follows:

11 Vanci Y. Fuller, Esq.
12 MCCURDY & FULLER, LLP
13 1906 W. Garvey Ave., So., Suite 110
14 West Covina, CA 91790
15 Tel.: (626)472-7346; Fax.: (626)472-7350
16 Attorneys for Defendant, National Union Fire Insurance Company of Pittsburgh, PA

17 **BY MAIL:** I deposited such envelope(s) in the mail at Costa Mesa, California. I am
18 "readily familiar" with the firm's practice of collection and processing correspondence for
19 mailing. Under that practice it would be deposited with U.S. postal service on that same
20 day with postage thereon fully prepaid the ordinary course of business. I am aware that on
21 motion of the party served, services is presumed invalid if postal cancellation date or
22 postage meter date is more than one day after date of deposit for mailing in affidavit.

23 **BY PERSONAL SERVICE:** I caused a true and correct copy thereof enclosed in a sealed
24 envelope to be delivered by hand to the below-named addressee(s).

25 **BY FACSIMILE TRANSMISSION:** I caused the above-referenced document to be
26 transmitted to the person(s) set forth above, at the facsimile number(s) set forth on the
27 attached service list. The facsimile machine I used complied with rule 2003(3) and no error
28 was reported by the machine. Pursuant to rule 2005(i), I caused the machine to print a
transmission record of the transmission, a copy of which is attached to this declaration.

BY OVERNIGHT DELIVERY: I placed the FEDEX package for overnight deliver in a box or
location regularly maintained by FEDEX at my office or I delivered the package to an
authorized courier or driver authorized by FEDEX to receive documents. The package was
placed in a sealed envelope or package designated by FEDEX with deliver fees paid or
provided for, addressed as follows:

(Federal) I declare that I am employed in the office of a member of the bar of this Court at
whose direction the service was made.

Executed on July 1, 2005, Costa Mesa, California.



Ludmila Froes