UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

FINANCIAL RESOURCES NETWORK, INC., FINANCIAL FAMILY HOLDINGS LLC, ROSALIND HERMAN and GREGG D. CAPLITZ, Plaintiffs,

V.

CIVIL ACTION NO. 09-11315-MBB

BROWN & BROWN, INC., BROWN & BROWN OF CALIFORNIA, INC., AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY, ZURICH NORTH AMERICA COMPANY AND CALSURANCE, Defendants.

PROCEDURAL ORDER RE: DEFENDANTS' SECOND RENEWED MOTION FOR SUMMARY JUDGMENT (DOCKET ENTRY # 119); PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT (DOCKET ENTRY # 115)

February 27, 2013

BOWLER, U.S.M.J.

Pending before this court is a summary judgment motion filed by defendants American Guarantee and Liability Insurance Company, Zurich North America Company, Brown & Brown, Inc., Brown & Brown of California, Inc. and Calsurance ("defendants"). (Docket Entry # 119). Plaintiffs Financial Resources Network, Inc., Rosalind Herman and Gregg D. Caplitz ("plaintiffs"), in turn, seek partial summary judgment to establish certain facts under Rule 56(g), Fed. R. Civ. P., and liability under Rule 56(a), Fed. R. Civ. P. (Docket Entry # 115).

Unlike defendants, plaintiffs incorporate facts and

arguments raised in support of their partial summary judgment motion to oppose defendants' summary judgment motion. (Docket Entry # 123). For example, the first page of plaintiffs' opposition to defendants' motion states, "[P]laintiffs incorporate by reference the facts section set forth in Plaintiffs Memo [Doc. #116] at 4-8." (Docket Entry # 123, p. 1). Defendants, however, do not incorporate arguments and facts raised in opposing plaintiffs' partial summary judgment motion to support defendants' summary judgment motion. Principles of fairness dictate allowing defendants the opportunity to incorporate such facts and arguments to support their summary judgment motion.

CONCLUSION

Defendants are therefore directed to inform this court on or before March 4, 2013, whether they wish to incorporate the facts and the arguments they present to oppose plaintiffs' partial summary judgment motion to also support their summary judgment motion.

/s/ Marianne B. Bowler

MARIANNE B. BOWLER

United States Magistrate Judge