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 7 *Aspen Specialty Insurance Company*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 ZURICH AMERICAN INSURANCE ) CASE NO.: 2:20-cv-01374-APG-DJA  
 11 COMPANY, )  
 )  
 12 Plaintiff, ) **AMENDED STIPULATION AND**  
 ) **~~[PROPOSED]~~ ORDER TO EXTEND**  
 13 vs. ) **DISCOVERY**  
 )  
 14 ASPEN SPECIALTY INSURANCE ) **(FIRST REQUEST)**  
 15 COMPANY, )  
 )  
 16 Defendant. )

17 Pursuant to Local Rules IA 6-1 and 26-3, IT IS HEREBY STIPULATED AND AGREED  
 18 by and between ZURICH AMERICAN INSURANCE COMPANY (“Plaintiff”) and ASPEN  
 19 SPECIALTY INSURANCE COMPANY (“Defendant”) that the current discovery deadlines be  
 20 extended in the above referenced matter. This is the first stipulation to extend discovery deadlines.

21 **I. BACKGROUND**

22  
 23 This case was filed on September 9, 2020. This insurance coverage dispute arises out of  
 24 the alleged failure of Defendant to provide proper defense and its refusal to settle an underlying  
 25 personal injury claim within policy limits related to injuries sustained by Steven and Melissa  
 26 Cochran, which occurred at the Marquee Nightclub (“Marquee”) in The Cosmopolitan Hotel and  
 27 Casino (“Cosmopolitan”). As the general liability policy insurer for the Cosmopolitan, Plaintiff  
 28

1 brings claims against Defendant for subrogation, contribution, and indemnification against  
2 Defendant, the general liability policy insurer for the Marquee.

3 Defendant filed a Motion to Dismiss Plaintiff's Complaint on October 27, 2020 (Doc. 7).  
4 Plaintiff filed an Opposition to the Motion to Dismiss on December 1, 2020, and Defendant filed  
5 its Reply on January 5, 2021. (Doc. Nos. 11, 18). The Motion having been fully briefed, the  
6 parties are awaiting a ruling from the Court. As such, no answer has been filed in this action.

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8 On April 1, 2021, the parties met and conferred to discuss the scope of discovery, issues  
9 involving disclosures, discovery and preservation of electronically stored information, and  
10 potential claims of privilege. Subsequently, on April 21, 2021, the parties submitted their  
11 Stipulated Discovery Plan and Scheduling Order, requesting special scheduling review (Doc. No.  
12 21). The Court denied the Stipulated Discovery Plan and Scheduling Order without prejudice,  
13 stating the parties failed to demonstrate adequate reason for the lengthy discovery period of 384  
14 days requested therein (Doc. No. 22). At that time, the Court ordered that discovery begin and  
15 provided a scheduling order whereby initial expert disclosures would be due three months after the  
16 date of the April 30, 2021 Order. *See id.*

17  
18 The parties subsequently filed a Stipulation and Order to Extend Discovery (First Request)  
19 and for Defendant to Serve Supplemental Responses to Plaintiff's First Set of Request for  
20 Production of Documents ("First Stipulation"), requesting a six-month extension of the discovery  
21 deadlines set by the Court on April 30, 2021. (Doc. No. 23). The Court denied the First Stipulation  
22 without prejudice for failure to comply with the requirements of Local Rule 26-3, and ordered that  
23 any subsequent stipulation to extend discovery deadlines comply with the provisions of LR 26-3.  
24 (Doc No. 24). The parties file this Amended Stipulation and Order to Extend Discovery in  
25 compliance with the Court's directives.

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1           **II.    DISCOVERY COMPLETED TO DATE**

2           On December 4, 2020, Plaintiff propounded its First Set of Requests for Production, and  
3 Defendant served its responses on January 6, 2021.

4           On May 26, 2021, Plaintiff served its initial disclosures.

5           **III.   DISCOVERY THAT REMAINS TO BE COMPLETED**

6           The parties will produce and supplement their FRCP 16.1 disclosures as necessary and  
7 appropriate, as additional information and documentation are made available in the course of  
8 discovery. Specifically, the parties intend to obtain and produce the pleadings, motions, and other  
9 papers on file in the underlying action and to subpoena non-privileged files in the underlying case,  
10 including defense files, non-privileged communications, and related records, as well as their own  
11 claims files and other non-party insurer claims files. Defendant is collecting information and  
12 documentation regarding the underlying personal injury action to fully evaluate Plaintiff's alleged  
13 injuries and reviewing the same for privilege prior to serving its initial production. Documents  
14 may need to be produced subject to a Stipulated Protective Order, as to be negotiated by the  
15 parties and approved by the Court.  
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17           Prior to disclosing expert reports, the parties anticipate that numerous depositions will be  
18 taken, including, but not limited to, percipient witnesses to the underlying personal injury action,  
19 each other's Rule 30(b)(6) witnesses, non-party insurance representatives and underlying defense  
20 counsel, including counsel from the law firms of Cohen & Padda, Eglet Adams, Hall Jaffe &  
21 Counsel, and Resnick & Louis. It is anticipated that issues regarding privilege will arise within the  
22 course of discovery that will require resolution.  
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24           The parties need to designate initial experts and exchange reports after depositions are  
25 taken. The parties will then need to conduct the depositions of Plaintiff's Expert(s) and  
26 Defendant's Expert(s).  
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1 Defendant intends to serve written discovery requests on Plaintiff, and Plaintiff may serve  
2 additional written discovery as needed.

3 **IV. REASONS FOR NOT COMPLETING DISCOVERY**

4 The parties respectfully request this extension to allow written discovery and depositions  
5 to take place prior to the initial expert disclosure deadline. This is an alleged subrogation action  
6 amongst insurers concerning alleged damages for payments made in an underlying action. This  
7 discovery extension is requested based on the complexity of this case, delays associated with the  
8 COVID-19 crisis, and the need for discovery prior to initial expert designations and reports.  
9

10 The volume of discovery necessary in a high stakes insurance subrogation case with  
11 significant damages at issue makes it challenging to obtain the information and conduct all  
12 necessary depositions in time to serve expert disclosures under the standard deadlines, and the  
13 parties submit the issues in the case and volume of discovery necessary in a case like this  
14 constitutes good cause to extend the deadlines. The parties acknowledge they were slow to start  
15 discovery while awaiting a ruling on the still-pending Motion to Dismiss that seeks potentially  
16 dispositive relief, but intend to complete discovery diligently moving forward to meet the  
17 extended deadlines.  
18

19 Additionally, good cause exists to extend the discovery deadlines given the inherent  
20 difficulties and delays necessarily associated with completing discovery during the Covid-19 crisis  
21 earlier in this litigation. Since March 2020, Nevada has been under various Emergency Directives  
22 from the Nevada Governor's Office due to the Covid-19 crisis, and the United States District  
23 Court for the District of Nevada also issued a series of general orders to address the Court's efforts  
24 to mitigate the spread of Covid-19, including orders affecting most aspects of civil litigation.  
25 Statewide Directives restricting normal business and public activities began to lift on or around  
26 March 2021, and jury trials were recently ordered to resume in the District of Nevada on March 8,  
27 2021. *See, e.g.* Fourth Amended Temporary General Order 2020-03. As restrictions are being  
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1 lifted and business is moving forward again, the parties anticipate that discovery will now proceed  
2 within the normal course.

3 The parties are working to complete discovery within the time period set forth in the initial  
4 scheduling order, and this is the first request for extension of discovery deadlines. However, due  
5 to restrictions and constraints on counsel, the parties agree that the current discovery deadlines  
6 provide insufficient time to complete the remaining discovery, and would impose undue time and  
7 economic burdens on all parties, particularly given the imminent initial expert disclosure deadline.  
8 For example, under the current deadlines, initial expert disclosures would need to be served before  
9 all party depositions have been completed, which would result in unnecessary supplemental  
10 reports, increasing costs to the parties to obtain rush or rough draft deposition transcripts for their  
11 experts to review. In particular, the initial expert deadline needs to be extended to allow experts to  
12 review documents in the preparation of their reports and to render their opinions after receiving  
13 the remaining discovery. Accordingly, additional time is needed to conduct the requisite  
14 discovery, investigation, and preparation to ensure that his matter is properly adjudicated on the  
15 merits.  
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18 Given the size of this litigation and the issues at stake, and the necessary discovery  
19 remaining to be completed, the parties respectfully request that the Court order an extension of the  
20 existing deadlines, as proposed below.

21 **V. PROPOSED MODIFICATION**

22 Based on the foregoing, the parties jointly seek a modification of the current deadlines as  
23 follows:  
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25 1. Current Deadlines:

26 Fact discovery cut-off date	September 28, 2021
27 Amend the pleading and add parties	June 30, 2021
28 Initial expert disclosures	July 30, 2021

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Rebuttal expert disclosures	August 30, 2021
Dispositive motions	October 28, 2021
Proposed joint pretrial order	November 30, 2021

2. Proposed Deadlines:

Amend the pleading and add parties	June 30, 2021
Fact discovery cut-off date	March 30, 2022
Initial expert disclosures	January 3, 2022
Rebuttal expert disclosures	February 3, 2022
Dispositive motions	April 4, 2022
Joint pretrial order	May 4, 2022

This request is made in good faith and not for the purposes of delay.

**IT IS SO STIPULATED.**

DATED this 18<sup>th</sup> day of June, 2021

DATED this 18<sup>th</sup> day of June, 2021

MESSNER REEVES LLP

MORALES FIERRO & REEVES

/s/ Michael M. Edwards

/s/ William Reeves

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Zurich American Insurance Company*

**ORDER**

**IT IS SO ORDERED.**

UNITED STATES MAGISTRATE JUDGE

DATED: June 21, 2021

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Messner Reeves LLP and that on this 18<sup>th</sup> day of June, 2021, I served a true and correct copy of the foregoing **AMENDED STIPULATION AND ORDER TO EXTEND DISCOVERY (FIRST REQUEST)** to all parties on file:

Ramiro Morales, Esq  
William Reeves, Esq  
MORALES, FIERRO, & REEVES  
600 S. Tonopah Drive, Suite 300  
Las Vegas, Nevada 89106  
*Attorneys for Plaintiff*  
*Zurich American Insurance Company*

- Hand Delivery
- FACSIMILE TRANSMISSION
- U.S. MAIL, POSTAGE PREPAID
- CM/ECF E-Filing Service System
- Electronic Mail

/s/ Laurie Moreno

An Employee of Messner Reeves LLP

**Laurie Moreno**

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**From:** William Reeves <wreeves@mfrlegal.com>  
**Sent:** Friday, June 18, 2021 2:49 PM  
**To:** Laurie Moreno  
**Cc:** Michael Edwards; Desja Wilder; Ryan A. Loosvelt; Stephanie Bedker  
**Subject:** RE: Zurich v. Aspen (Cochran)

You are so authorized. Thanks.

William C. Reeves  
**MORALES • FIERRO • REEVES**  
2151 Salvio Street, Suite 280  
Concord, CA 94520  
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**From:** Laurie Moreno [mailto:LMoreno@messner.com]  
**Sent:** Friday, June 18, 2021 2:46 PM  
**To:** William Reeves  
**Cc:** Michael Edwards; Desja Wilder; Ryan A. Loosvelt; Stephanie Bedker  
**Subject:** RE: Zurich v. Aspen (Cochran)

*Sent on behalf of Michael M. Edwards*

Good afternoon,

Attached please find the Amended Stipulation and Order to Extend Discovery for your review. Please advise if we have your authority to affix your electronic signature on the Stipulation.

Thank you.

**Laurie Moreno**  
*Legal Assistant*

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**From:** Ryan A. Loosvelt <RLoosvelt@messner.com>  
**Sent:** Thursday, June 17, 2021 4:52 PM  
**To:** William Reeves <wreeves@mfrlegal.com>  
**Cc:** Michael Edwards <medwards@messner.com>; Desja Wilder <DWilder@messner.com>; Laurie Moreno <LMoreno@messner.com>  
**Subject:** Re: Zurich v. Aspen (Cochran)

We plan to circulate a draft of a revised stipulation tomorrow with the contents/discovery parameters the court referenced in its order on the prior stip. Please let us know if you will not be around tomorrow to review.

Thanks,