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UNITED STATES DISTRICT COURT  
 DISTRICT OF OREGON  
 PORTLAND DIVISION

SCHNITZER STEEL INDUSTRIES, INC.,  
 an Oregon corporation; and MMGL CORP.,  
 a Washington corporation,

Plaintiffs,

v.

CONTINENTAL CASUALTY  
 COMPANY, an Illinois corporation; and  
 TRANSPORTATION INSURANCE  
 COMPANY, an Illinois corporation,

Defendants.

Case No.: 3:10-cv-01174-MO

STIPULATED ~~PROPOSED~~ ORDER  
 RESOLVING DEFENDANTS' MOTION  
 FOR SUMMARY JUDGMENT  
 REGARDING THE RETROACTIVITY  
 AND CONSTITUTIONALITY OF SB 814

The parties by and through their undersigned counsel hereby stipulate and move the  
 Court to enter an order resolving the relief sought in defendants' October 1, 2013 (corrected

Page 1 - STIPULATED ~~PROPOSED~~ ORDER RESOLVING DEFENDANTS' MOTION  
 FOR SUMMARY JUDGMENT REGARDING THE RETROACTIVITY AND  
 CONSTITUTIONALITY OF SB 814

October 2, 2013) Motion for [partial] Summary Judgment Regarding the Retroactivity and Constitutionality of SB 814 (ECF No. 237) (“Summary Judgment Motion”).

### **RECITALS**

A. Defendants’ (collectively “Continental”) Summary Judgment Motion asserts that Section 6 of Oregon Senate Bill 814 (“Section 6”), enacted and effective June 10, 2013, does not apply retroactively to, and could not constitutionally be construed to subject an insurance company to liability for, alleged unfair environmental claims settlement practices occurring before June 10, 2013.

B. In a letter dated July 19, 2013, Schnitzer requested that Continental reimburse Schnitzer for alleged unpaid defense expenses and further stated that its July 19 letter constituted notice of a claim under Section 6. Schnitzer maintains and confirms that it does not seek recovery pursuant to the July 19 letter in its Amended and Supplemental Complaint (ECF No. 226).

C. Schnitzer maintains and confirms that its operative pleading in this action, its Amended and Supplemental Complaint, does not seek recovery under Section 6, including recovery of enhanced damages, for alleged unfair environmental claims settlement practices occurring prior to June 10, 2013. Rather, Schnitzer alleges a right to relief under Section 6 only for any unfair environmental claims settlement practices that have allegedly occurred or may occur after June 10, 2013.

D. Schnitzer maintains and confirms that it has not taken the position in its Amended and Supplemental Complaint that Section 6 applies retroactively to any defense costs submitted by Schnitzer to Continental for reimbursement prior to June 10, 2013.

E. By entering into this stipulation to avoid unnecessary motion practice, no party intends to waive any arguments or positions about whether Section 6 of SB 814 or any other provision of SB 814 applies retroactively or whether such retroactive application would be constitutional, nor is this stipulation intended to be an admission of any kind by any party.

### **OPERATIVE TERMS**

1. Schnitzer's Amended and Supplemental Complaint seeks recovery under Section 6 only as follows:

a. Pursuant to paragraph 48 of the Amended and Supplemental Complaint, Schnitzer alleges a right to enhanced damages for any unfair environmental claims settlement practices within the meaning of Section 6 only with respect to defense costs first submitted by Schnitzer to Continental for reimbursement on or after June 10, 2013.

b. Pursuant to paragraph 51(f) of the Amended and Supplemental Complaint, Schnitzer alleges a right to recover interest under Section 6 for invoices first submitted on or after June 10, 2013 and not paid in full by Continental within 30 days of receipt by Continental.

c. Pursuant to paragraph 51(g) of the Amended and Supplemental Complaint, Schnitzer seeks enhanced damages in an amount determined by the Court only as to any unfair environmental claims settlement practices within the meaning of Section 6 with respect to defense costs first submitted by Schnitzer to Continental for reimbursement on or after June 10, 2013.

2. Schnitzer does not seek under its Amended and Supplemental Complaint enhanced damages under Section 6 for defense costs first submitted to Continental for reimbursement before June 13, 2013.

3. This stipulation fully resolves the issues raised in the Summary Judgment Motion.

IT IS SO STIPULATED this 24th day of October, 2013.

*s/ Scott J. Kaplan*

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Attorneys for Defendants

#### DECLARATION REGARDING SIGNATURES

I, Scott J. Kaplan, declare under penalty of perjury that I obtained concurrence to file this document from other signatory to this document.

*s/ Scott J. Kaplan*

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SCOTT J. KAPLAN

IT IS SO ORDERED this 25<sup>th</sup> day of Oct., 2013

*/s/ Michael W. Mosman*

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THE HONORABLE MICHAEL W. MOSMAN  
United States District Court Judge