

IN THE UNITED STATES DISTRICT COURT
FOR WESTERN DISTRICT OF PENNSYLVANIA

FLEMING FITZGERALD &
ASSOCIATES, LIMITED, FISH AND
GAME FRONTIERS, INC. d/b/a
FRONTIERS INTERNATIONAL, INC.,
PONOI RIVER COMPANY and
SHACKLETON INTERNATIONAL
LIMITED,

Plaintiffs,

v.

U.S. SPECIALTY INSURANCE
COMPANY,

Defendant and
Third-Party Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY and STEADFAST
INSURANCE COMPANY,

Third-Party
Defendants.

CIVIL ACTION NO. 07-1596

Hon. Gary L. Lancaster

**STIPULATION OF DISMISSAL OF THIRD-PARTY COMPLAINT WITH PREJUDICE
AND OF CONSENT TO THE AMENDMENT OF DEFENDANT'S ANSWER
AND AFFIRMATIVE DEFENSES**

The parties hereto, Plaintiffs Fleming Fitzgerald & Associates, Ltd., Fish and Game Frontiers Inc., PonoI River Company and Shackleton International Ltd. ("Plaintiffs"), Defendant and Third-Party Plaintiff U.S. Specialty Insurance Company ("U.S. Specialty") and Third-Party Defendants Zurich American Insurance Company and Steadfast Insurance Company ("Third Party Defendants"), hereby stipulate and agree as follows:

Pursuant to Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, all Parties stipulate to the dismissal with prejudice of U.S. Specialty's Third-Party Complaint against Third Party Defendants.

The parties hereto agree that this Stipulation shall not in any way affect the status of the Partial Summary Judgment Motions filed by U.S. Specialty and currently pending before the Court.

Plaintiffs, without in any way admitting the merits of such defense, hereby consent to Defendant U.S. Specialty's amendment of its Answer and Affirmative Defenses to expand its affirmative defense asserting set-off to clarify that U.S. Specialty is asserting entitlement to a right of set-off against any amounts for which it might otherwise be liable to Plaintiffs in an amount equal to: (a) all or some of the amounts covered under the insurance policies issued by the Third Party Defendants or (b) the Third Party Defendants' settlement payments to Plaintiffs. Plaintiffs' consent to this amendment shall not be deemed consent to any other amendment that Defendant may seek leave to make to its Answer and Affirmative Defenses.

The parties hereto further agree that no party to this litigation may introduce this Stipulation as evidence in this action or in any other proceeding, for any purposes, except to enforce its terms, and no party shall claim that any other party's consent to this Stipulation in any way supports or refutes any allegation, claim or defense of such other party, whether asserted in this action or any other proceeding. Nothing in this agreement shall in any way affect the right of any party to introduce evidence of the date on which Defendant's Third-Party Complaint was dismissed or evidence of the reasons for such dismissal.

Dated: February 9, 2009

Counsel for Defendant and Third Party Plaintiff:

/s/ Louis C. Long, Esq.
Louis C. Long, Esq.
Pa. I.D. No. 32615
P. Brennan Hart, Esq.
Pa. I.D. No. 18123
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP
One Oxford Centre
Thirty Eighth Floor
Pittsburgh, PA 15219
412-263-2000

/s/ John Chesney, Esq.
John Chesney
Pa. I.D. No. 24458
Douglas M. Mangel, Esq. (admitted *pro hac vice*)
DRINKER BIDDLE & REATH LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
(215) 988-2842

Counsel for Third Party Defendant:


/s/ Lawrence Bistany, Esq.
Lawrence Bistany, Esq.
Pa. I.D. No. 61825
WHITE AND WILLIAMS LLP
1800 One Liberty Place
Philadelphia, PA 19103
(215) 864-7000

Counsel for Plaintiffs:

/s/ Amy B. Briggs, Esq.
Amy B. Briggs, Esq. (admitted *pro hac vice*)
Stephen S. Mayne, Esq. (admitted *pro hac vice*)
MANATT, PHELPS & PHILLIPS, LLP
One Embarcadero Center
30th Floor
San Francisco, CA 94111
415-291-7400

/s/ Robert E. Dapper, Jr.
Robert E. Dapper, Jr.
Pa. I.D. No. 46378
DAPPER, BALDASARE, BENSON,
BEHLING & KANE, P.C.
Four Gateway Center
10th Floor
44 Liberty Avenue
Pittsburgh, PA 15222
412-456-5555

SO ORDERED, this 17th day of February, 2009.


Hon. Garv L. Lancaster, U.S. District Judge