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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

AMERICAN HALLMARK INSURANCE  
COMPANY OF TEXAS, a Texas Corp.,

Plaintiff,

v.

KRAFF'S MEN'S WEAR CO., INC., a  
Washington corporation; DANIEL P.  
JOHNSON, a Washington resident;  
TRAVELERS CASUALTY INSURANCE  
COMPANY OF AMERICA, a Connecticut  
corporation; THE TRAVELERS INDEMNITY  
COMPANY, a Connecticut corporation; THE  
CHARTER OAK FIRE INSURANCE  
COMPANY, a Connecticut corporation;  
TRANSPORTATION INSURANCE  
COMPANY, an Illinois corporation;  
CONTINENTAL CASUALTY COMPANY, an  
Illinois corporation, AMERICAN CASUALTY  
COMPANY OF READING  
PENNSYLVANIA, an Illinois corporation; and  
HARTFORD CASUALTY INSURANCE  
COMPANY, a Connecticut corporation,

Defendants.

NO: 1:15-CV-3104-TOR

ORDER DENYING  
CONTINENTAL'S REQUEST  
FOR CLAIMS-BAR ORDER;  
GRANTING STIPULATED  
MOTIONS TO DISMISS

1 BEFORE THE COURT is Third Party Defendants Continental Casualty  
2 Company, Transportation Insurance Company, and American Casualty Company  
3 of Reading Pennsylvania's Motion to Approve Settlement (ECF No. 59), and the  
4 parties Stipulated Motions to Dismiss (ECF Nos. 69; 77). These matters were  
5 submitted for consideration without oral argument. The Court has reviewed the  
6 record and files herein, and is fully informed.

7 Per the parties' stipulation, the Motions to Dismiss (ECF Nos. 69; 77) are  
8 GRANTED. For the reasons discussed below, the Motion to Approve Settlement  
9 is DENIED.

## 10 BACKGROUND

### 11 1. Parties; Claims

12 The instant action involves a suit for contribution amongst insurers.  
13 American Hallmark Insurance Company of Texas ("Hallmark") filed the instant  
14 suit for declaratory relief as to who will ultimately be liable for damages arising  
15 out of a suit by Pendleton Woolen Mills ("Pendleton") against its insured Kraff's  
16 Men's Wear Co. and Daniel Johnson (the insured parties, collectively "Kraff's").  
17 Hallmark named Kraff's; Traveler's Casualty Insurance Company of America, the  
18 Travelers Indemnity Company, the Charter Oak Fire Insurance Company  
19 (collectively "Travelers"); Transportation Insurance Company, Continental  
20

1 Casualty Company, American Casualty Company of Reading, PA (collectively  
2 “Continental”); and Hartford Casualty Insurance Company (“Hartford”).

3 Travelers filed an answer and asserted cross and counter claims, requesting  
4 declaratory relief that it does not owe any coverage obligations, and seeking  
5 contribution and subrogation against all defendants.<sup>1</sup> ECF No. 37 at 42-44. Per  
6 stipulated Motions to Dismiss, the Court dismissed Hallmark’s claims against  
7 Continental and Pendleton. ECF Nos. 52, 53. In this Order, the Court is also  
8 dismissing claims between Hallmark and Kraff’s and between Hallmark and  
9 Travelers per their respective Joint Stipulated Motions (ECF Nos. 69; 77).

## 10 **2. Underlying Litigation**

11 The underlying financial obligations arise out of litigation between  
12 Pendleton and Kraff’s, where Pendleton asserted Kraff’s was liable for numerous  
13 violations of copyright and trademark rights, among other claims. The parties had  
14 a lengthy business relationship dating back to the 1940s. However, in the  
15 underlying litigation, Pendleton’s complaint alleges that, on September 18, 2012,  
16 Pendleton expressly revoked and withdrew the prior permission to use copyright-  
17 protected fabric and blanket designs in any commercial manner. ECF No. 1-1 at  
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19 <sup>1</sup> Continental also filed an Answer, but did not assert any cross-claims or  
20 counter-claims. ECF No. 34. Apparently, Hartford has not filed an Answer.

1 20-21, ¶ 98. The complaint also alleges that in “a subsequent letter dated  
2 December 4, 2012, Pendleton allowed Kraff’s a firm one (1) year sell-through  
3 period to exhaust its inventory of products manufactured using Pendleton’s fabric  
4 and copyrighted designs and informed Kraff’s that any subsequent sales would be  
5 considered infringement of Pendleton’s copyrights.” ECF No. 1-1 at 20-21, ¶ 98.

6 In the underlying complaint, Pendleton alleged 25 counts of copyright  
7 infringement, asserting that “since December 5, 2013, [Kraff’s] willfully infringed  
8 and are continuing to willfully infringe” Pendleton’s copyrights by selling  
9 Pendleton goods. *See* ECF Nos. 1-1 ¶¶ 107-281; 59. However, the remaining  
10 claims do not include a date range. *See* ECF No. 1-1 at ¶¶ 282-325.

11 Kraff’s insurers Hartford, Travelers, and Hallmark tendered a defense with  
12 reservation of rights; but Kraff’s insurer Continental refused to tender a defense,  
13 arguing the alleged actionable conduct did not take place during the effective dates  
14 of coverage.<sup>2</sup>

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17 <sup>2</sup> Continental issued three successive insurance policies to Kraff’s, each  
18 bearing policy number 4024077646, with effective dates from August 20 2010 to  
19 August 20, 2011; August 20, 2011 to August 20, 2012, and August 20, 2012 to  
20 August 20, 2013. *See* ECF No. 59 at 3.

1 **3. Settlements**

2 On August 29, 2016, Pendleton settled with Kraff's for \$425,000.00 (the  
3 "first settlement"). Kraff's paid \$25,000 of the settlement, while Hallmark,  
4 Travelers, and Hartford evenly split the remaining \$400,000 and attorney fees of  
5 \$264,500 (about \$221,500 each). See ECF Nos. 64 at 2; 65-1 at 3. Continental did  
6 not join the agreement. See ECF No. 65 at 2. Kraff's retained its right to pursue a  
7 claim against Continental, as did the settling insurance companies for contribution  
8 against Continental. See ECF No. 65-1 at 6-7.

9 About one month later, Continental entered into a settlement agreement with  
10 Kraff's, whereby Continental would pay \$70,000 to Kraff's in return for a release  
11 of all claims (the "second settlement"). See ECF No. 59 at 1. However, the  
12 agreement is contingent on the Court imposing a claims-bar order preventing  
13 contribution claims by the other insurers against Continental. ECF No. 59 at 1.  
14 Continental now requests the Court enter such an order, but Hartford and Travelers  
15 oppose the motion. ECF Nos. 59; 64; 66. This issue is now before the Court.

16 **DISCUSSION**

17 Insurance companies share joint and severable liability where the underlying  
18 insurance agreements provide coverage. *Puget Sound Energy v. Certain*  
19 *Underwriters at Lloyd's, London*, 134 Wash. App. 228, 250 (2006). In the interest  
20 of encouraging early settlement, courts may impose a claims-bar order protecting

1 settling parties from future contribution claims against co-defendants. *Id.*; *Bank of*  
2 *Am. v. Travelers Indem. Co.*, 2009 WL 529227, at \*1 (W.D. Wash. Mar. 2, 2009);  
3 *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1231 (9th Cir. 1989).

4 In the context of settling federal security litigation, the Ninth Circuit  
5 recognized the importance of a claims-bar order:

6 [Without a claims-bar order protecting settling parties,] partial settlement of  
7 any federal securities question before trial is, as a practical matter,  
8 impossible. Any single defendant who refuses to settle, for whatever reason,  
9 forces all others to trial. Anyone foolish enough to settle without barring  
contribution is courting disaster. They are allowing the total damages from  
which their ultimate share will be derived to be determined in a trial where  
they are not even represented.

10 *Franklin*, 884 F.2d at 1229 (quoting *In re Nucorp Energy Sec. Litig.*, 661 F. Supp.  
11 1403, 1408 (S.D. Cal. 1987)). As the Western District of Washington has noted:

12 In multi-party litigation, bar orders can be an essential component of a  
13 partial settlement . . . The public policy favoring settlement and the Court's  
14 interest in expeditiously clearing complex litigation from its docket must,  
15 however, be "tempered by the need to assure factual fairness and the correct  
application of legal principles" when considering a contribution bar. A bar  
order is appropriate only where the proposed settlement is reasonable and  
the interests of the non-settling defendants are protected.

16 *Bank of Am.*, 2009 WL at \*1 (quoting *Franklin*, 884 F.2d at 1225, 1231).

17 The Court is declining to exercise the power to impose a claims-bar order.  
18 Under the facts presented, it is questionable as to whether granting a claims-bar  
19 request would further the public policy of encouraging settlement, and equity does  
20 not demand the order be entered. In this instance, a claims-bar order would reward

1 parties that hold out on settling rather than the parties that entered into a settlement  
2 in the first instance. It also extinguishes Travelers cross claims seeking  
3 contribution and subrogation against Continental. ECF No. 37 at 42-44. Travelers  
4 is entitled to its day in court and a purported settlement between Kraff's and  
5 Continental does not change that.

6 On review, the balance tips in favor of not allowing a claims-bar order.  
7 While a claims-bar order would encourage later settlements by those not party to  
8 the first settlement, the overall effect would be to encourage an insurer to drag its  
9 feet rather than settle in hopes that it can strike a bargain with the insured. Here  
10 Hallmark, Travelers, and Hartford paid over \$220,000 each, while Continental  
11 would only pay \$70,000 for whatever claims Kraff's carved out from the first  
12 settlement. Travelers is entitled to pursue contribution irrespective of  
13 Continental's subsequent settlement with the insured.

14 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 15 1. Third Party Defendants Continental Casualty Company, Transportation  
16 Insurance Company, and American Casualty Company of Reading PA's  
17 Motion to Approve Settlement (ECF No. 59) is **DENIED**.
- 18 2. The parties' Stipulated Motions to Dismiss (ECF Nos. 69; 77) are  
19 **GRANTED**. All claims that have been asserted, or may be asserted  
20 between Plaintiff and Kraff's, Plaintiff and Daniel Johnson, and Plaintiff

1 and Travelers are **dismissed with prejudice with each party bearing its**  
2 **own attorney fees and costs.** This dismissal does not affect any  
3 remaining claims in this matter including any other claims that have been  
4 brought by any other party.

5 The District Court Executive is hereby directed to enter this Order and  
6 furnish copies to counsel.

7 **DATED** July 27, 2017.



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*Thomas O. Rice*  
THOMAS O. RICE  
Chief United States District Judge