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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 FISHER COMMUNICATIONS, INC.,

7 Plaintiff,

8 v.

9 TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

10 Defendant,

11 v.

12 CERTAIN UNDERWRITERS AT
LLOYD'S, et al.,

13 Third-Party Defendants.

C11-1225 TSZ

MINUTE ORDER

14
15 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

16 (1) Plaintiff's and Third-Party Defendants' unopposed motion to continue trial,
17 docket no. 58, is GRANTED as follows. The current trial date of May 6, 2013, and all
related deadlines are STRICKEN.

18 (2) Defendant's motion for summary judgment, docket no. 53, is STRICKEN
19 without prejudice. By Order entered September 4, 2012, docket no. 43, the Court granted
20 in part defendant's motion for partial summary judgment and held as a matter of law that
21 plaintiff's damages resulting from fire and water were not covered under the named-peril
22 (boiler and machinery or equipment breakdown) policy at issue. The Court further
23 directed the parties to file a joint status report indicating what, if any, issues remain for
trial in this matter. In their Joint Status Report, docket no. 47, the parties outlined the
following issues: (i) whether the policy at issue contains "a special grant of coverage for
water damage" up to \$250,000; (ii) whether defendant made payments to plaintiff for loss

1 also covered by third-party defendants and is entitled to reimbursement; and (iii) whether
2 third-party defendants' defenses that defendant lacks standing, waived its claim, or acted
3 as a volunteer operate to preclude defendant from such reimbursement. The Joint Status
4 Report further indicated that plaintiff would dismiss its claims under the Washington
5 Consumer Protection Act and Insurance Fair Conduct Act (Second and Fourth Causes of
6 Action), *see also* Stip. & Order (docket no. 50) (dismissing such claims), but the Joint
7 Status Report was silent as to whether plaintiff intended to pursue its claim for a
8 declaratory judgment that "Travelers must pay Fisher for all insured loss, damage and
9 expense attributable to arcing subject only to set off for amounts previously paid by
10 Travelers and the 50% pro-rata share of the loss that is found to be insured jointly by
11 Fisher's Fire Policy and the Travelers Policy." First Am. Compl. at ¶ 38(iii) (docket
12 no. 17). In its current motion for summary judgment, defendant addresses only the first
issue described in the Joint Status Report. Thus, whether granting defendant's motion
would obviate the need for a trial in this matter remains unclear. Moreover, in response
to defendant's motion, plaintiff has raised issues not set forth in the Joint Status Report
but perhaps within the scope of the claim for declaratory relief summarized above. In its
reply, defendant asserts that third-party defendants as plaintiff's subrogees waived the
declaratory relief issues by not including them in the Joint Status Report, and that such
issues "should be litigated in the third-party contribution action." Reply at 2 (docket
no. 63). The Court, however, has not bifurcated the first-party and third-party claims for
purposes of trial, and to the extent that all such claims can be resolved by way of motions
practice, each side should present its arguments in one consolidated dispositive motion.
See Local Civil Rule 7(e)(3).

13 (3) In light of the foregoing, the Court SETS the following deadlines:

14 (a) Discovery shall be completed by April 12, 2013;

15 (b) Defendant/third-party plaintiff shall file its dispositive motion on or
16 before April 25, 2013, and shall note such motion for consideration on June 7,
2013;

17 (c) Plaintiff/third-party defendants shall file a consolidated response to
18 defendant/third-party plaintiff's dispositive motion and any cross-motion on or
before May 13, 2013, and shall note the cross-motion for consideration on June 7,
2013;

19 (d) Defendant/third-party plaintiff shall file a consolidated reply in
20 support of its motion and response to plaintiff/third-party defendants' cross-
motion, if any, on or before June 3, 2013;

21 (e) Plaintiff/third-party defendants shall file a reply in support of their
22 cross-motion, if any, on or before June 7, 2013.
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1 (4) If a party's dispositive motion does not seek to resolve all remaining claims
2 in this matter, then such motion shall be denominated as a motion (or cross-motion) for
3 partial summary judgment. The Court will set a trial date and related deadlines, if
4 appropriate, after it rules on the parties' dispositive motions.

5 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of
6 record.

7 Dated this 28th day of February, 2013.

8 William M. McCool
9 Clerk

10 s/Claudia Hawney
11 Deputy Clerk