

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZURICH AMERICAN INSURANCE  
COMPANY, et al.,

*Plaintiffs and Appellants,*

vs.

IRONSHORE SPECIALTY  
INSURANCE COMPANY,

*Defendant and Respondent.*

No. 81428

Electronically Filed  
Jan 12 2021 11:21 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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RESPONDENT'S APPENDIX

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William C. Morison, No. 9872

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IRONSHORE SPECIALTY INSURANCE COMPANY

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Attorneys for Defendant  
IRONSHORE SPECIALTY  
INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

ASSURANCE COMPANY OF AMERICA, AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY and NORTHERN INSURANCE COMPANY OF NEW YORK,	)	Case No.
	)	
	)	
	)	IRONSHORE SPECIALTY
	)	INSURANCE COMPANY'S NOTICE
	)	<u>OF REMOVAL</u>
Plaintiffs,	)	
	)	
vs.	)	
	)	
IRONSHORE SPECIALTY INSURANCE COMPANY and DOES 1-20 inclusive,	)	
	)	
Defendants.	)	

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1332, 1441(a) and 1446, defendant Ironshore Specialty Insurance Company ("Ironshore") hereby removes to this Court the above-captioned state court action. Ironshore states the following grounds for removal:

1. This action was commenced on or about May 14, 2013, by the filing of a Complaint against Ironshore in the District Court of the State of Nevada for the County of Clark, entitled *Assurance Company of America et al. v. Ironshore Specialty Insurance Company*, No. A-13-681791 ("the state court action"). A First Amended Complaint was filed on or about October

1 25, 2013.

2 2. In the state court action, Plaintiffs Assurance Company of America, American  
3 Guarantee and Liability Insurance Company and Northern Insurance Company of New York  
4 ("Plaintiffs") seek a judicial declaration that Ironshore owes a duty to defend certain entities in 10  
5 lawsuits involving several hundred residences and multiple construction projects, and for  
6 damages for contribution and indemnity, based on payments that one or more plaintiffs made with  
7 respect to the defense and/or settlement of those lawsuits. Plaintiffs allege that Ironshore owes a  
8 duty to defend and/or indemnify their mutual insureds under one or more of five insurance  
9 policies issued by Ironshore. The limits of the general liability coverage part for each of those  
10 policies is \$1,000,000. Therefore, by way of these claims, the amount in controversy exceeds  
11 \$75,000, exclusive of interest and costs.

12 3. At the time the state court action was filed, each of the Plaintiffs were, and still  
13 are, a corporation organized and existing under the laws of the State of New York, with its  
14 principal place of business in the State of New York.

15 4. At the time the state court action was filed, Ironshore was, and still is, a  
16 corporation organized and existing under the laws of the State of Arizona, with its principal place  
17 of business in the State of Massachusetts. Therefore, Ironshore is a citizen of both the State of  
18 Arizona and the State of Massachusetts.

19 5. The state court action is one of which the district courts of the United States have  
20 original jurisdiction under the provisions of 28 U.S.C. section 1332(a)(1), and is one which may  
21 be removed to this Court by Ironshore pursuant to the provisions of 28 U.S.C. sections 1332,  
22 1441(a), and 1446. This is a civil action between citizens of different states, complete diversity of  
23 citizenship exists between plaintiffs and defendant, and the amount in controversy exceeds the  
24 sum or value of \$75,000, exclusive of interest and costs.

25 6. This Notice of Removal is filed within 30 days of the date that Ironshore received  
26 a copy of the First Amended Complaint in the state court action, which is the first notice  
27 Ironshore received of the state court action. The summons and First Amended Complaint in the  
28 state court action were served on Ironshore by the Commissioner of Insurance for the State of

1 Nevada by letter dated November 7, 2013. A true and correct copy of the letter, summons, First  
2 Amended Complaint, proof of service, and all other papers in the state court action received by  
3 Ironshore is attached hereto as Exhibit 1.

4 WHEREFORE, Ironshore hereby gives notice that the state court action is removed in its  
5 entirety from the District Court of the State of Nevada for the County of Clark to the United  
6 States District Court for the District of Nevada.

7 Dated: November 26, 2013

Respectfully submitted,

8 MORISON & PROUGH, LLP

9  
10 By: /s/ William C. Morison  
11 William C. Morison

12 Attorneys for Defendant  
13 IRONSHORE SPECIALTY  
INSURANCE COMPANY

14  
15 152778

BRIAN SANDOVAL  
*Governor*

STATE OF NEVADA

BRUCE H. BRESLOW  
*Director*

SCOTT J. KIPPER  
*Commissioner*



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104-4137  
(702) 486-4009 • Fax (702) 486-4007  
Website: doi.nv.gov  
E-mail: insinfo@doi.nv.gov

November 7, 2013

Ironshore Specialty Insurance Company  
Attn: Domenic Serratore  
75 Federal Street, 5<sup>th</sup> Floor  
Boston, MA 02110

RE: Assurance Company of America, et al. vs. Ironshore Specialty Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A681791

Dear Mr. Serratore:

Enclosed please find the following documents: Summons - Civil and First Amended Complaint. These documents have been served upon the Commissioner of Insurance as your attorney for service of process on November 6, 2013.

The appropriate action should be taken immediately, as you may only have 30 days from the date of this service to respond.

If you have any questions regarding this service, please advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

By:

A handwritten signature in blue ink that reads "Rhonda Kelly".

RHONDA KELLY  
Service of Process Clerk

Enclosures

c: William C. Reeves, Esq.


**PROOF OF SERVICE**

I hereby declare that on this day I served a copy of the Summons - Civil and First Amended Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

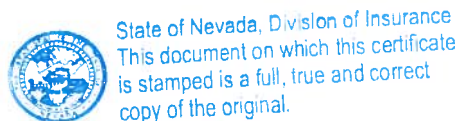
Ironshore Specialty Insurance Company  
Attn: Domenic Serratore  
75 Federal Street, 5<sup>th</sup> Floor  
Boston, MA 02110  
CERTIFIED MAIL NO. 7011 1570 0003 2210 9784

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 7<sup>th</sup> day of November, 2013.

  
RHONDA KELLY  
Employee of the State of Nevada  
Department of Business and Industry  
Division of Insurance

RE: Assurance Company of America, et al. vs. Ironshore Specialty Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A681791



Date: 11/7/13 By: Rhonda Kelly



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE  
2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104-4137  
(702) 486-4009 • Fax (702) 486-4007  
Website: doi.nv.gov  
E-mail: insinfo@doi.nv.gov

November 7, 2013

William C. Reeves, Esq.  
Morales, Fierro & Reeves  
600 S. Tonopah Drive, Suite 300  
Las Vegas, NV 89106

RE: Assurance Company of America, et al. vs. Ironshore Specialty Insurance Company, et al.  
District Court, Clark County, Nevada  
Case No. A681791

Dear Mr. Reeves:

The Division received the service of process documents on November 6, 2013 regarding the above-entitled matter. Service has been completed on Ironshore Specialty Insurance Company this date and enclosed are the following:

1. A copy of our letter to Ironshore Specialty Insurance Company dated November 7, 2013;
2. A certified copy of the Proof of Service dated November 7, 2013; and
3. Your receipt in the amount of \$30.00.

Pursuant to *Nevada Revised Statutes* 680A.260, 685A.200, and 685B.050, all documents after initial service of process may be served directly to the party.

If you have any questions regarding this service, please so advise.

Sincerely,

SCOTT J. KIPPER  
Commissioner of Insurance

By:

A handwritten signature in cursive script, appearing to read "Rhonda Kelly", written over a horizontal line.  
RHONDA KELLY  
Service of Process Clerk

Enclosures

c: Ironshore Specialty Insurance Company





SUMM  
William C. Reeves  
State Bar No. 8235  
MORALES FIERRO & REEVES  
600 S. Tonopah Drive, Suite 300  
Las Vegas, Nevada 89106  
Telephone: 702/699-7822  
Facsimile: 702/699-9455

Attorneys for Plaintiffs

DISTRICT COURT  
CLARK COUNTY, NEVADA

ASSURANCE COMPANY OF AMERICA, ) Case No.: A681791  
AMERICAN GUARANTEE AND )  
LIABILITY INSURANCE COMPANY and ) SUMMONS  
NORTHERN INSURANCE COMPANY OF )  
NEW YORK, )

Plaintiffs,

vs.

IRONSHORE SPECIALTY INSURANCE )  
COMPANY and DOES 1-20 inclusive, )

Defendants.

SUMMONS – CIVIL

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE  
INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the  
relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on  
you, exclusive of the day of service, you must do the following:

(a) File with the Clerk of this Court, whose address is shown below, a formal  
written response to the Complaint in accordance with the rules of the Court,  
with the appropriate filing fee.

///

(b) Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and failure to so respond will result in a judgment of default against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

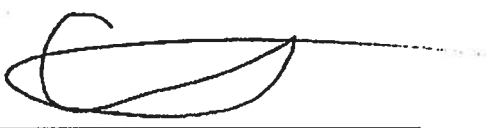
3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators each have 45 days after service of this Summons within which to file an Answer or other responses pleadings to the Complaint.

Submitted by:

CLERK OF THE COURT

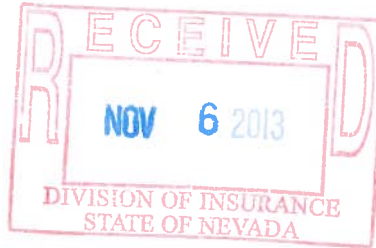
NOV 01 2013

  
William C. Reeves  
MORALES FIERRO & REEVES  
600 S. Tonopah Drive, Suite 300  
Las Vegas, Nevada 89106  
Attorneys for Plaintiffs

By: WALTER ABREGO-BONILLA

Deputy Clerk  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155





Electronically Filed  
10/25/2013 02:45:20 PM

  
CLERK OF THE COURT

1 FAC  
2 William C. Reeves  
3 State Bar No. 8235  
4 MORALES FIERRO & REEVES  
5 725 S. Eighth Street, Suite B  
6 Las Vegas, NV 89101  
7 Telephone: 702/699-7822  
8 Facsimile: 702/699-9455

9 Attorneys for Plaintiffs

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 ASSURANCE COMPANY OF AMERICA,	)	Case No.: A681791
13 AMERICAN GUARANTEE AND	)	
14 LIABILITY INSURANCE COMPANY and	)	FIRST AMENDED COMPLAINT
15 NORTHERN INSURANCE COMPANY OF	)	
16 NEW YORK,	)	
17 Plaintiffs,	)	
18 vs.	)	
19 IRONSHORE SPECIALTY INSURANCE	)	
20 COMPANY and DOES 1-20 inclusive,	)	
21 Defendants.	)	

22 Plaintiffs Assurance Company of America ("Assurance"), American Guarantee and Liability  
23 Insurance Company ("American Guarantee") and Northern Insurance Company Of New York  
24 ("Northern") allege as follows:

25 1. Plaintiffs are corporation engaged in the business of issuing commercial general  
26 liability insurance policies.

27 2. On information and belief, defendant Ironshore Specialty Insurance Company  
28 ("Ironshore") is a corporation engaged in the business of issuing commercial general liability  
insurance policies.

3. Certain acts and/or omissions covered by the insurance contracts at issue herein took  
place in this judicial district. On information and belief, therefore, venue lies with this Court as a  
substantial part of the events which are the subject and nexus of the claims asserted herein are

1 located and/or took place in this judicial district.

2 CAUSE OF ACTION NO. 1 - DECLARATORY RELIEF

3 Cedco - Bagley

4 4. Ironshore issued Cedco a commercial general liability policy assigned policy no.  
5 001194200 (effective 04/01/10-04/01/11) ("Ironshore-CD Policy").

6 5. On information and belief, the Ironshore-CD Policy provides that Ironshore shall  
7 defend any suit in which allegations were made of damages because of "property damage"  
8 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
9 excluded. "Property damage" is generally defined as physical injury to tangible property and  
10 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
11 exposure to substantially the same general harmful conditions.

12 6. On information and belief, the Ironshore-CD Policy also includes an IB.EX.014B  
13 Continuous or Progressive Injury endorsement ("Prior Damage Endorsement") which excludes from  
14 coverage damages which "first existed" prior to the inception of the policy.

15 7. Cedco was named as a defendant in a matter styled Bagley v. All Drywall and Paint,  
16 Clark County Case No.: A620609 ("Bagley").

17 8. Allegations were made in Bagley of damages to real property that potentially could  
18 have occurred during the time the Ironshore-CD Policy was in effect.

19 9. On behalf of Cedco, request was made that Ironshore provide a defense in Bagley.

20 10. Ironshore conducted a limited investigation in an effort to try and confirm that  
21 construction of the real property at issue in Bagley was completed prior to the inception of the  
22 Ironshore-CD Policy.

23 11. Based on the belief that all construction work at issue was completed prior to the  
24 inception of any relevant policy, Ironshore disclaimed coverage to Cedco in connection with Bagley  
25 based on the assertion of the Prior Damage Endorsement.

26 12. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
27 Damage Endorsement is baseless and contrary to law.

28 13. Assurance issued Cedco one or more commercial general liability policies

1 (collectively Zurich-CD Policies").

2 14. As with the Ironshore-CD Policy, the Zurich-CD Policies also provide that a defense  
3 is owed in any suit in which allegations were made of damages because of "property damage"  
4 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
5 excluded. "Property damage" is generally defined as physical injury to tangible property and  
6 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
7 exposure to substantially the same general harmful conditions.

8 15. In response to a tender, a defense was provided to Cedco in connection with Bagley.

9 16. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
10 duty to defend Cedco in connection with Bagley under the Ironshore-CD Policy.

11 17. This dispute presents an actual, present and justiciable controversy.

12 18. A judicial determination of this controversy is necessary and appropriate in order for  
13 the parties to ascertain their rights, duties and obligations regarding this dispute.

14 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

15 CAUSE OF ACTION NO. 2 - CONTRIBUTION

16 Cedco - Bagley

17 19. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
18 herein.

19 20. Sums were incurred on behalf of Cedco in connection with the Bagley matter under  
20 the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

21 21. The obligations owing under the Ironshore-CD Policy and the Zurich-CD Policies as  
22 to the Bagley matter are co-extensive and overlap as the policies afford coverage for the same risks.

23 22. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in  
24 excess of their equitable share.

25 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

26 CAUSE OF ACTION NO. 3 - INDEMNITY

27 Cedco - Bagley

28 23. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth

1 herein.

2 24. Sums were incurred on behalf of Cedco in connection with the Bagley matter under  
3 the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

4 25. Given the allegations of damage during the period the Ironshore-CD Policy was in  
5 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
6 Ironshore-CD Policy.

7 26. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
8 sums paid were its sole obligation under the Ironshore-CD Policy.

9 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

10 CAUSE OF ACTION NO. 4 - DECLARATORY RELIEF

11 Cedco - Blasco

12 27. Ironshore issued Cedco the Ironshore-CD Policy.

13 28. On information and belief, the Ironshore-CD Policy provides that Ironshore shall  
14 defend any suit in which allegations were made of damages because of "property damage"  
15 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
16 excluded. "Property damage" is generally defined as physical injury to tangible property and  
17 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
18 exposure to substantially the same general harmful conditions.

19 29. On information and belief, the Ironshore-CD Policy also includes a Prior Damage  
20 Endorsement.

21 30. Cedco was named as a defendant in a matter styled Blasco v Rhodes Design, Clark  
22 County Case No.: A578060 ("Blasco")

23 31. Allegations were made in Blasco of damages to real property that potentially could  
24 have occurred during the time the Ironshore-CD Policy was in effect.

25 32. On behalf of Cedco, request was made that Ironshore provide a defense in Blasco.

26 33. Ironshore conducted a limited investigation in an effort to try and confirm that  
27 construction of the real property at issue in Blasco was completed prior to the inception of the  
28 Ironshore-CD Policy.

36. Assurance issued the Zurich-CD Policies.

38. In response to a tender, a defense was provided to Cedco in connection with Blasco.

40. This dispute presents an actual, present and justiciable controversy.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

Cedco - Blasco

43. Sums were incurred on behalf of Cedco in connection with the Blasco matter under the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

45. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in



1 excess of their equitable share.

2 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

3 CAUSE OF ACTION NO. 6 - INDEMNITY

4 Cedco - Blasco

5 46. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
6 herein.

7 47. Sums were incurred on behalf of Cedco in connection with the Blasco matter under  
8 the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

9 48. Given the allegations of damage during the period the Ironshore-CD Policy was in  
10 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
11 Ironshore-CD Policy.

12 49. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
13 sums paid were its sole obligation under the Ironshore-CD Policy.

14 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

15 CAUSE OF ACTION NO. 7 - DECLARATORY RELIEF

16 Cedco - Ishihama

17 50. Ironshore issued Cedco the Ironshore-CD Policy.

18 51. On information and belief, the Ironshore-CD Policy provides that Ironshore shall  
19 defend any suit in which allegations were made of damages because of "property damage"  
20 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
21 excluded. "Property damage" is generally defined as physical injury to tangible property and  
22 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
23 exposure to substantially the same general harmful conditions.

24 52. On information and belief, the Ironshore-CD Policy also includes a Prior Damage  
25 Endorsement.

26 53. Cedco was named as a defendant in a matter styled Ishihama v. Terravita Home  
27 Construction Co., Clark County Case No.: A632302 ("Ishihama")

28 54. Allegations were made in Ishihama of damages to real property that potentially could



1 have occurred during the time the Ironshore-CD Policy was in effect.

2 55. On behalf of Cedco, request was made that Ironshore provide a defense in Ishihama.

3 56. Ironshore conducted a limited investigation in an effort to try and confirm that  
4 construction of the real property at issue in Ishihama was completed prior to the inception of the  
5 Ironshore-CD Policy. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all  
6 of the sums paid were its sole obligation under the Ironshore-CD Policy.

7 57. Based on the belief that all construction work at issue was completed prior to the  
8 inception of any relevant policy, Ironshore disclaimed coverage to Cedco in connection with  
9 Ishihama based on the assertion of the Prior Damage Endorsement.

10 58. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
11 Damage Endorsement is baseless and contrary to law.

12 59. Assurance issued the Zurich-CD Policies.

13 60. As with the Ironshore-CD Policy, the Zurich-CD Policies also provide that a defense  
14 is owed in any suit in which allegations were made of damages because of "property damage"  
15 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
16 excluded. "Property damage" is generally defined as physical injury to tangible property and  
17 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
18 exposure to substantially the same general harmful conditions.

19 61. In response to a tender, a defense was provided to Cedco in connection with  
20 Ishihama.

21 62. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
22 duty to defend Cedco in connection with Ishihama under the Ironshore-CD Policy.

23 63. This dispute presents an actual, present and justiciable controversy.

24 64. A judicial determination of this controversy is necessary and appropriate in order for  
25 the parties to ascertain their rights, duties and obligations regarding this dispute.

26 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

27 ///

28 ///

CAUSE OF ACTION NO. 5 - CONTRIBUTION

Cedco - Ishihama

65. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

66. Sums were incurred on behalf of Cedco in connection with the Ishihama matter under the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

67. The obligations owing under the Ironshore-CD Policy and the Zurich-CD Policies as to the Ishihama matter are co-extensive and overlap as the policies afford coverage for the same risks.

68. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in excess of their equitable share.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

CAUSE OF ACTION NO. 9 - INDEMNITY

Cedco - Ishihama

69. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

70. Sums were incurred on behalf of Cedco in connection with the Ishihama matter under the Zurich-CD Policies in connection with the defense of it and/or settlement of claims.

71. Given the allegations of damage during the period the Ironshore-CD Policy was in effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the Ironshore-CD Policy.

72. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the sums paid were its sole obligation under the Ironshore-CD Policy.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

CAUSE OF ACTION NO. 10 - DECLARATORY RELIEF

Champion - Garcia

73. Ironshore issued Champion Masonry ("Champion") a commercial general liability policy assigned Policy No.: 011040905001 ("Ironshore-CM Policy").

1           74.     On information and belief, the Ironshore-CM Policy provides that Ironshore shall  
2 defend any suit in which allegations were made of damages because of "property damage"  
3 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
4 excluded. "Property damage" is generally defined as physical injury to tangible property and  
5 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
6 exposure to substantially the same general harmful conditions.

7           75.     On information and belief, the Ironshore-CM Policy also includes a Prior Damage  
8 Endorsement.

9           76.     Champion was named as a defendant in a matter styled Garcia v. Centex Homes,  
10 Clark County Case No.: A616729 ("Garcia")

11           77.     Allegations were made in Garcia of damages to real property that potentially could  
12 have occurred during the time the Ironshore-CM Policy was in effect.

13           78.     On behalf of Champion, request was made that Ironshore provide a defense in  
14 Garcia.

15           81.     Ironshore conducted a limited investigation in an effort to try and confirm that  
16 construction of the real property at issue in Garcia was completed prior to the inception of the  
17 Ironshore-CM Policy.

18           82.     Based on the belief that all construction work at issue was completed prior to the  
19 inception of any relevant policy, Ironshore disclaimed coverage to Champion in connection with  
20 Garcia based on the assertion of the Prior Damage Endorsement.

21           83.     Ironshore's assumption regarding the timing of damages so as to assert its Prior  
22 Damage Endorsement is baseless and contrary to law.

23           84.     American Guarantee issued one or more commercial general liability policies to  
24 Champion ("Zurich-CM Policies").

25           85.     As with the Ironshore-CM Policy, the Zurich-CM Policies also provide that a  
26 defense is owed in any suit in which allegations were made of damages because of "property  
27 damage" potentially caused by an "occurrence," occurring during the policy period and not  
28 otherwise excluded. "Property damage" is generally defined as physical injury to tangible property

1 and corresponding loss of use. "Occurrence" is generally defined as an accident, including the  
2 repeated exposure to substantially the same general harmful conditions.

3 86. In response to a tender, a defense was provided to Champion in connection with  
4 Garcia.

5 87. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
6 duty to defend Champion in connection with Garcia under the Ironshore-CM Policy.

7 88. This dispute presents an actual, present and justiciable controversy.

8 89. A judicial determination of this controversy is necessary and appropriate in order for  
9 the parties to ascertain their rights, duties and obligations regarding this dispute.

10 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

#### 11 CAUSE OF ACTION NO. 11 - CONTRIBUTION

12 Champion - Garcia

13 90. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
14 herein.

15 91. Sums were incurred on behalf of Champion in connection with the Garcia matter  
16 under the Zurich-CM Policies in connection with the defense of it and/or settlement of claims.

17 92. The obligations owing under the Ironshore-CM Policy and the Zurich-CM Policies  
18 as to the Garcia matter are co-extensive and overlap as the policies afford coverage for the same  
19 risks.

20 93. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in  
21 excess of their equitable share.

22 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

#### 23 CAUSE OF ACTION NO. 12 - INDEMNITY

24 Champion - Garcia

25 94. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
26 herein.

27 95. Sums were incurred on behalf of Champion in connection with the Garcia matter  
28 under the Zurich-CM Policies in connection with the defense of it and/or settlement of claims.

1           96.     Given the allegations of damage during the period the Ironshore-CM Policy was in  
2 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
3 Ironshore-CM Policy.

4           97.     Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
5 sums paid were its sole obligation under the Ironshore-CM Policy.

6           Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

7                           CAUSE OF ACTION NO. 13 - DECLARATORY RELIEF

8                           Laird Whipple - Stacy

9           98.     Ironshore issued Southwest Foundations, Inc. dba Laird Whipple ("Laird Whipple")  
10 a commercial general liability policy assigned Policy No.: 011040905001 ("Ironshore-LW Policy").

11           99.     On information and belief, the Ironshore-LW Policy provides that Ironshore shall  
12 defend any suit in which allegations were made of damages because of "property damage"  
13 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
14 excluded. "Property damage" is generally defined as physical injury to tangible property and  
15 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
16 exposure to substantially the same general harmful conditions.

17           100.    On information and belief, the Ironshore-LW Policy also includes a Prior Damage  
18 Endorsement.

19           101.    Laird Whipple was named as a defendant in a matter styled Stacy v. American West  
20 Homes, Inc., Clark County Case No.: A575959 ("Stacy")

21           102.    Allegations were made in Stacy of damages to real property that potentially could  
22 have occurred during the time the Ironshore-LW Policy was in effect.

23           103.    On behalf of Laird Whipple, request was made that Ironshore provide a defense in  
24 Stacy.

25           104.    Ironshore conducted a limited investigation in an effort to try and confirm that  
26 construction of the real property at issue in Stacy was completed prior to the inception of the  
27 Ironshore-LW Policy.

28           105.    Based on the belief that all construction work at issue was completed prior to the

1 inception of any relevant policy, Ironshore disclaimed coverage to Laird Whipple in connection  
2 with Stacy based on the assertion of the Prior Damage Endorsement.

3 106. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
4 Damage Endorsement is baseless and contrary to law.

5 107. Northern and Assurance issued one or more commercial general liability policies to  
6 Laird Whipple ("Zurich-LW Policies").

7 108. As with the Ironshore-LW Policy, the Zurich-LW Policies also provide that a  
8 defense is owed in any suit in which allegations were made of damages because of "property  
9 damage" potentially caused by an "occurrence," occurring during the policy period and not  
10 otherwise excluded. "Property damage" is generally defined as physical injury to tangible property  
11 and corresponding loss of use. "Occurrence" is generally defined as an accident, including the  
12 repeated exposure to substantially the same general harmful conditions.

13 109. In response to a tender, a defense was provided to Laird Whipple in connection with  
14 Stacy.

15 110. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
16 duty to defend Laird Whipple in connection with Stacy under the Ironshore-LW Policy.

17 111. This dispute presents an actual, present and justiciable controversy.

18 112. A judicial determination of this controversy is necessary and appropriate in order for  
19 the parties to ascertain their rights, duties and obligations regarding this dispute.

20 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

## 21 CAUSE OF ACTION NO. 14 - CONTRIBUTION

22 Laird Whipple - Stacy

23 113. Plaintiffs incorporate the provisions of all prior paragraphs as though fully set forth  
24 herein.

25 114. Sums were incurred on behalf of Laird Whipple in connection with the Stacy matter  
26 under the Zurich-LW Policies in connection with the defense of it and/or settlement of claims.

27 115. The obligations owing under the Ironshore-LW Policy and the Zurich-LW Policies  
28 as to the Stacy matter are co-extensive and overlap as the policies afford coverage for the same

1 risks.

2 116. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in  
3 excess of their equitable share.

4 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

5 CAUSE OF ACTION NO. 15 - INDEMNITY

6 Laird Whipple - Stacy

7 117. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
8 herein.

9 118. Sums were incurred on behalf of Laird Whipple in connection with the Stacy matter  
10 under the Zurich-LW Policies in connection with the defense of it and/or settlement of claims.

11 119. Given the allegations of damage during the period the Ironshore-LW Policy was in  
12 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
13 Ironshore-LW Policy.

14 120. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
15 sums paid were its sole obligation under the Ironshore-LW Policy.

16 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

17 CAUSE OF ACTION NO. 16 - DECLARATORY RELIEF

18 Laird Whipple - Cohen

19 121. Ironshore issued Laird Whipple the Ironshore-LW Policy.

20 122. On information and belief, the Ironshore-LW Policy provides that Ironshore shall  
21 defend any suit in which allegations were made of damages because of "property damage"  
22 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
23 excluded. "Property damage" is generally defined as physical injury to tangible property and  
24 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
25 exposure to substantially the same general harmful conditions.

26 123. On information and belief, the Ironshore-LW Policy also includes a Prior Damage  
27 Endorsement.

28 124. Laird Whipple was named as a defendant in a matter styled Cohen v. Nigro Desert



1 Bloom, LLC, Clark County Case No.: A591492 ("Cohen")

2 125. Allegations were made in Cohen of damages to real property that potentially could  
3 have occurred during the time the Ironshore-LW Policy was in effect.

4 126. On behalf of Laird Whipple, request was made that Ironshore provide a defense in  
5 Cohen.

6 127. Ironshore conducted a limited investigation in an effort to try and confirm that  
7 construction of the real property at issue in Cohen was completed prior to the inception of the  
8 Ironshore-LW Policy.

9 128. Based on the belief that all construction work at issue was completed prior to the  
10 inception of any relevant policy, Ironshore disclaimed coverage to Laird Whipple in connection  
11 with Cohen based on the assertion of the Prior Damage Endorsement.

12 129. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
13 Damage Endorsement is baseless and contrary to law.

14 130. Northern and Assurance issued the Zurich-LW Policies.

15 131. As with the Ironshore-LW Policy, the Zurich-LW Policies also provide that a  
16 defense is owed in any suit in which allegations were made of damages because of "property  
17 damage" potentially caused by an "occurrence," occurring during the policy period and not  
18 otherwise excluded. "Property damage" is generally defined as physical injury to tangible property  
19 and corresponding loss of use. "Occurrence" is generally defined as an accident, including the  
20 repeated exposure to substantially the same general harmful conditions.

21 132. In response to a tender, a defense was provided to Laird Whipple in connection with  
22 Cohen.

23 133. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
24 duty to defend Laird Whipple in connection with Cohen under the Ironshore-LW Policy.

25 134. This dispute presents an actual, present and justiciable controversy.

26 135. A judicial determination of this controversy is necessary and appropriate in order for  
27 the parties to ascertain their rights, duties and obligations regarding this dispute.

28 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.



CAUSE OF ACTION NO. 17 - CONTRIBUTION

Laird Whipple - Cohen

136. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

137. Sums were incurred on behalf of Laird Whipple in connection with the Cohen matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of claims.

138. The obligations owing under the Ironshore-LW Policy and the Zurich-LW Policies as to the Cohen matter are co-extensive and overlap as the policies afford coverage for the same risks.

139. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in excess of their equitable share.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

CAUSE OF ACTION NO. 18 - INDEMNITY

Laird Whipple - Cohen

140. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

141. Sums were incurred on behalf of Laird Whipple in connection with the Cohen matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of claims.

142. Given the allegations of damage during the period the Ironshore-LW Policy was in effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the Ironshore-LW Policy.

143. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the sums paid were its sole obligation under the Ironshore-LW Policy.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

CAUSE OF ACTION NO. 19 - DECLARATORY RELIEF

Laird Whipple - Wright

144. Ironshore issued Laird Whipple the Ironshore-LW Policy.

145. On information and belief, the Ironshore-LW Policy provides that Ironshore shall

1 defend any suit in which allegations were made of damages because of "property damage"  
2 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
3 excluded. "Property damage" is generally defined as physical injury to tangible property and  
4 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
5 exposure to substantially the same general harmful conditions.

6 146. On information and belief, the Ironshore-LW Policy also includes a Prior Damage  
7 Endorsement.

8 147. Laird Whipple was named as a defendant in a matter styled Wright v. Carina Corp.,  
9 Clark County Case No.: A602989 ("Wright")

10 148. Allegations were made in Wright of damages to real property that potentially could  
11 have occurred during the time the Ironshore-LW Policy was in effect.

12 149. On behalf of Laird Whipple, request was made that Ironshore provide a defense in  
13 Wright.

14 150. Ironshore conducted a limited investigation in an effort to try and confirm that  
15 construction of the real property at issue in Wright was completed prior to the inception of the  
16 Ironshore-LW Policy.

17 151. Based on the belief that all construction work at issue was completed prior to the  
18 inception of any relevant policy, Ironshore disclaimed coverage to Laird Whipple in connection  
19 with Wright based on the assertion of the Prior Damage Endorsement.

20 152. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
21 Damage Endorsement is baseless and contrary to law.

22 153. Northern and Assurance issued the Zurich-LW Policies.

23 154. As with the Ironshore-LW Policy, the Zurich-LW Policies also provide that a  
24 defense is owed in any suit in which allegations were made of damages because of "property  
25 damage" potentially caused by an "occurrence," occurring during the policy period and not  
26 otherwise excluded. "Property damage" is generally defined as physical injury to tangible property  
27 and corresponding loss of use. "Occurrence" is generally defined as an accident, including the  
28 repeated exposure to substantially the same general harmful conditions.

1           155. In response to a tender, a defense was provided to Laird Whipple in connection with  
2 Wright.

3           156. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
4 duty to defend Laird Whipple in connection with Wright under the Ironshore-LW Policy.

5           157. This dispute presents an actual, present and justiciable controversy.

6           158. A judicial determination of this controversy is necessary and appropriate in order for  
7 the parties to ascertain their rights, duties and obligations regarding this dispute.

8           Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

9                                   CAUSE OF ACTION NO. 20 - CONTRIBUTION

10                               Laird Whipple - Wright

11           159. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
12 herein.

13           160. Sums were incurred on behalf of Laird Whipple in connection with the Wright  
14 matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of  
15 claims.

16           161. The obligations owing under the Ironshore-LW Policy and the Zurich-LW Policies  
17 as to the Wright matter are co-extensive and overlap as the policies afford coverage for the same  
18 risks.

19           162. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in  
20 excess of their equitable share.

21           Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

22                                   CAUSE OF ACTION NO. 21 - INDEMNITY

23                               Laird Whipple - Wright

24           163. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
25 herein.

26           164. Sums were incurred on behalf of Laird Whipple in connection with the Wright  
27 matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of  
28 claims.

1           165. Given the allegations of damage during the period the Ironshore-LW Policy was in  
2 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
3 Ironshore-LW Policy.

4           166. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
5 sums paid were its sole obligation under the Ironshore-LW Policy.

6           Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

7                           CAUSE OF ACTION NO. 22 - DECLARATORY RELIEF

8                           Laird Whipple - Colford

9           167. Ironshore issued Laird Whipple the Ironshore-LW Policy.

10          168. On information and belief, the Ironshore-LW Policy provides that Ironshore shall  
11 defend any suit in which allegations were made of damages because of "property damage"  
12 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
13 excluded. "Property damage" is generally defined as physical injury to tangible property and  
14 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
15 exposure to substantially the same general harmful conditions.

16          169. On information and belief, the Ironshore-LW Policy also includes a Prior Damage  
17 Endorsement.

18          170. Laird Whipple was named as a defendant in a matter styled Colford v. American  
19 West Homes, Inc., Clark County Case No.: A593923 ("Colford")

20          171. Allegations were made in Colford of damages to real property that potentially could  
21 have occurred during the time the Ironshore-LW Policy was in effect.

22          172. On behalf of Laird Whipple, request was made that Ironshore provide a defense in  
23 Colford.

24          173. Ironshore conducted a limited investigation in an effort to try and confirm that  
25 construction of the real property at issue in Colford was completed prior to the inception of the  
26 Ironshore-LW Policy.

27          174. Based on the belief that all construction work at issue was completed prior to the  
28 inception of any relevant policy, Ironshore disclaimed coverage to Laird Whipple in connection

1 with Colford based on the assertion of the Prior Damage Endorsement.

2 175. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
3 Damage Endorsement is baseless and contrary to law.

4 176. Northern and Assurance issued the Zurich-LW Policies.

5 177. As with the Ironshore-LW Policy, the Zurich-LW Policies also provide that a  
6 defense is owed in any suit in which allegations were made of damages because of "property  
7 damage" potentially caused by an "occurrence," occurring during the policy period and not  
8 otherwise excluded. "Property damage" is generally defined as physical injury to tangible property  
9 and corresponding loss of use. "Occurrence" is generally defined as an accident, including the  
10 repeated exposure to substantially the same general harmful conditions.

11 178. In response to a tender, a defense was provided to Laird Whipple in connection with  
12 Colford.

13 179. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
14 duty to defend Laird Whipple in connection with Colford under the Ironshore-LW Policy.

15 180. This dispute presents an actual, present and justiciable controversy.

16 181. A judicial determination of this controversy is necessary and appropriate in order for  
17 the parties to ascertain their rights, duties and obligations regarding this dispute.

18 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

19 CAUSE OF ACTION NO. 23 - CONTRIBUTION

20 Laird Whipple - Colford

21 182. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
22 herein.

23 183. Sums were incurred on behalf of Laird Whipple in connection with the Colford  
24 matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of  
25 claims.

26 184. The obligations owing under the Ironshore-LW Policy and the Zurich-LW Policies  
27 as to the Colford matter are co-extensive and overlap as the policies afford coverage for the same  
28 risks.

185. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in excess of their equitable share.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

#### CAUSE OF ACTION NO. 24 - INDEMNITY

Laird Whipple - Colford

186. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

187. Sums were incurred on behalf of Laird Whipple in connection with the Colford matter under the Zurich-LW Policies in connection with the defense of it and/or settlement of claims.

188. Given the allegations of damage during the period the Ironshore-LW Policy was in effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the Ironshore-LW Policy.

189. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the sums paid were its sole obligation under the Ironshore-LW Policy.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

#### CAUSE OF ACTION NO. 25 - DECLARATORY RELIEF

Stewart and Sundell - Torrey Pines

190. Ironshore issued Stewart and Sundell a commercial general liability policy assigned policy no. 00167401 (effective 03/01/10-03/01/11) ("Ironshore-SS Policy").

191. On information and belief, the Ironshore-SS Policy provides that Ironshore shall defend any suit in which allegations were made of damages because of "property damage" potentially caused by an "occurrence," occurring during the policy period and not otherwise excluded. "Property damage" is generally defined as physical injury to tangible property and corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated exposure to substantially the same general harmful conditions.

192. On information and belief, the Ironshore-SS Policy also includes a Prior Damage Endorsement.

1           193. Stewart and Sundell was named as a defendant in a matter styled Torrey Pines Ranch  
2 Estates HOA v. U.S. Home Corp., Clark County Case No.: A571846 ("Torrey Pines")

3           194. Allegations were made in Torrey Pines of damages to real property that potentially  
4 could have occurred during the time the Ironshore-SS Policy was in effect.

5           195. On behalf of Stewart and Sundell, request was made that Ironshore provide a defense  
6 in Torrey Pines.

7           196. Ironshore conducted a limited investigation in an effort to try and confirm that  
8 construction of the real property at issue in Torrey Pines was completed prior to the inception of the  
9 Ironshore-SS Policy.

10           197. Based on the belief that all construction work at issue was completed prior to the  
11 inception of any relevant policy, Ironshore disclaimed coverage to Stewart and Sundell in  
12 connection with Torrey Pines based on the assertion of the Prior Damage Endorsement.

13           198. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
14 Damage Endorsement is baseless and contrary to law.

15           199. Northern issued Stewart and Sundell one or more commercial general liability  
16 policies ("Zurich-SS Policies").

17           200. As with the Ironshore-SS Policy, the Zurich-SS Policies also provide that a defense  
18 is owed in any suit in which allegations were made of damages because of "property damage"  
19 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
20 excluded. "Property damage" is generally defined as physical injury to tangible property and  
21 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
22 exposure to substantially the same general harmful conditions.

23           201. In response to a tender, a defense was provided to Stewart and Sundell in connection  
24 with Torrey Pines.

25           202. A dispute exists in this case regarding whether Ironshore also owed a co-extensive  
26 duty to defend Stewart and Sundell in connection with Torrey Pines under the Ironshore-SS Policy.

27           203. This dispute presents an actual, present and justiciable controversy.

28           204. A judicial determination of this controversy is necessary and appropriate in order for



1 the parties to ascertain their rights, duties and obligations regarding this dispute.

2 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

3 CAUSE OF ACTION NO. 26 - CONTRIBUTION

4 Stewart and Sundell - Torrey Pines

5 205. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
6 herein.

7 206. Sums were incurred on behalf of Stewart and Sundell in connection with the Torrey  
8 Pines matter under the Zurich-SS Policies in connection with the defense of it and/or settlement of  
9 claims.

10 207. The obligations owing under the Ironshore-SS Policy and the Zurich-SS Policies as  
11 to the Torrey Pines matter are co-extensive and overlap as the policies afford coverage for the same  
12 risks.

13 208. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in  
14 excess of their equitable share.

15 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

16 CAUSE OF ACTION NO. 27 - INDEMNITY

17 Stewart and Sundell - Torrey Pines

18 209. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth  
19 herein.

20 210. Sums were incurred on behalf of Stewart and Sundell in connection with the Torrey  
21 Pines matter under the Zurich-SS Policies in connection with the defense of it and/or settlement of  
22 claims.

23 211. Given the allegations of damage during the period the Ironshore-SS Policy was in  
24 effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the  
25 Ironshore-SS Policy.

26 212. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the  
27 sums paid were its sole obligation under the Ironshore-SS Policy.

28 Wherefore, Plaintiffs pray for judgment as hereinafter set forth.



## 1 CAUSE OF ACTION NO. 28 - DECLARATORY RELIEF

## 2 Universal Framing - Macias

3 213. Ironshore issued Universal Framing a commercial general liability policy assigned  
4 policy no. 00T960805001 (effective 10/13/08-10/13/09) ("Ironshore-UF Policy").

5 214. On information and belief, the Ironshore-UF Policy provides that Ironshore shall  
6 defend any suit in which allegations were made of damages because of "property damage"  
7 potentially caused by an "occurrence," occurring during the policy period and not otherwise  
8 excluded. "Property damage" is generally defined as physical injury to tangible property and  
9 corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated  
10 exposure to substantially the same general harmful conditions.

11 215. On information and belief, the Ironshore-UF Policy also includes a Prior Damage  
12 Endorsement.

13 216. Universal Framing was named as a defendant in a matter styled Macias v. DW  
14 Arnold, Inc., Washoe County Case No.: CV10-02863 ("Macias")

15 217. Allegations were made in Macias of damages to real property that potentially could  
16 have occurred during the time the Ironshore-UF Policy was in effect.

17 218. On behalf of Universal Framing, request was made that Ironshore provide a defense  
18 in Macias.

19 219. Ironshore conducted a limited investigation in an effort to try and confirm that  
20 construction of the real property at issue in Macias was completed prior to the inception of the  
21 Ironshore-UF Policy.

22 220. Based on the belief that all construction work at issue was completed prior to the  
23 inception of any relevant policy, Ironshore disclaimed coverage to Universal Framing in connection  
24 with Macias based on the assertion of the Prior Damage Endorsement.

25 221. Ironshore's assumption regarding the timing of damages so as to assert its Prior  
26 Damage Endorsement is baseless and contrary to law.

27 222. Northern issued Universal Framing one or more commercial general liability policies  
28 ("Zurich-UF Policies").

223. As with the Ironshore-UF Policy, the Zurich-UF Policies also provide that a defense is owed in any suit in which allegations were made of damages because of "property damage" potentially caused by an "occurrence," occurring during the policy period and not otherwise excluded. "Property damage" is generally defined as physical injury to tangible property and corresponding loss of use. "Occurrence" is generally defined as an accident, including the repeated exposure to substantially the same general harmful conditions.

224. In response to a tender, a defense was provided to Universal Framing in connection with Macias.

225. A dispute exists in this case regarding whether Ironshore also owed a co-extensive duty to defend Universal Framing in connection with Macias under the Ironshore-UF Policy.

226. This dispute presents an actual, present and justiciable controversy.

227. A judicial determination of this controversy is necessary and appropriate in order for the parties to ascertain their rights, duties and obligations regarding this dispute.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

#### CAUSE OF ACTION NO. 29 - CONTRIBUTION

##### Universal Framing - Macias

228. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

229. Sums were incurred on behalf of Universal Framing in connection with the Macias matter under the Zurich-UF Policies in connection with the defense of it and/or settlement of claims.

230. The obligations owing under the Ironshore-UF Policy and the Zurich-UF Policies as to the Macias matter are co-extensive and overlap as the policies afford coverage for the same risks.

231. Plaintiffs, therefore, are entitled to contribution from Ironshore for all sums paid in excess of their equitable share.

Wherefore, Plaintiffs pray for judgment as hereinafter set forth.

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///

CAUSE OF ACTION NO. 30 - INDEMNITY

Universal Framing - Macias

232. Plaintiffs incorporate the provisions or all prior paragraphs as though fully set forth herein.

233. Sums were incurred on behalf of Universal Framing in connection with the Macias matter under the Zurich-UF Policies in connection with the defense of it and/or settlement of claims.

234. Given the allegations of damage during the period the Ironshore-UF Policy was in effect, some or all of the sums incurred by Plaintiffs were the sole obligation of Ironshore under the Ironshore-UF Policy.

235. Plaintiffs, therefore, are entitled to indemnity from Ironshore as some or all of the sums paid were its sole obligation under the Ironshore-UF Policy.

Wherefore, Plaintiffs pray for judgment as follows:

As to the First Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Cedco in connection with Bagley;

2. For a declaration and determination as to the sum Ironshore must reimburse Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to the Fourth Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Cedco in connection with Blasco;

2. For a declaration and determination as to the sum Ironshore must reimburse Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

1           5.       For all other relief this Court deems proper.

2           As to the Seventh Cause of Action for Declaratory Relief:

3           1.       For a declaration and determination that Ironshore owed a duty to defend Cedco in  
4 connection with Ishihama;

5           2.       For a declaration and determination as to the sum Ironshore must reimburse  
6 Plaintiffs;

7           3.       For damages according to proof at trial;

8           4.       For costs and interest; and

9           5.       For all other relief this Court deems proper.

10          As to the Tenth Cause of Action for Declaratory Relief:

11          1.       For a declaration and determination that Ironshore owed a duty to defend Champion  
12 in connection with Garcia;

13          2.       For a declaration and determination as to the sum Ironshore must reimburse  
14 Plaintiffs;

15          3.       For damages according to proof at trial;

16          4.       For costs and interest; and

17          5.       For all other relief this Court deems proper.

18          As to the Thirteenth Cause of Action for Declaratory Relief:

19          1.       For a declaration and determination that Ironshore owed a duty to defend Laird  
20 Whipple in connection with Stacy;

21          2.       For a declaration and determination as to the sum Ironshore must reimburse  
22 Plaintiffs;

23          3.       For damages according to proof at trial;

24          4.       For costs and interest; and

25          5.       For all other relief this Court deems proper.

26          As to the Sixteenth Cause of Action for Declaratory Relief:

27          1.       For a declaration and determination that Ironshore owed a duty to defend Laird  
28 Whipple in connection with Cohen;

2. For a declaration and determination as to the sum Ironshore must reimburse  
Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to the Nineteenth Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Laird  
Whipple in connection with Wright;

2. For a declaration and determination as to the sum Ironshore must reimburse  
Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to the Twenty Second Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Laird  
Whipple in connection with Colford;

2. For a declaration and determination as to the sum Ironshore must reimburse  
Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to the Twenty Fifth Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Stewart  
and Sundell in connection with Torrey Pines;

2. For a declaration and determination as to the sum Ironshore must reimburse  
Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to the Twenty Eighth Cause of Action for Declaratory Relief:

1. For a declaration and determination that Ironshore owed a duty to defend Universal Framing in connection with Macias;

2. For a declaration and determination as to the sum Ironshore must reimburse Plaintiffs;

3. For damages according to proof at trial;

4. For costs and interest; and

5. For all other relief this Court deems proper.

As to all other causes of action:

1. For damages according to proof at trial;

2. For costs and interest; and

3. For all other relief this Court deems proper.

Dated: October 25, 2013

MORALES FIERRO & REEVES

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UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

ASSURANCE CO. OF AMERICA, et al.	)	Case No.: 2:13-cv-02191-GMN-CWH
	)	
Plaintiffs,	)	ORDER RE: FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
vs.	)	
	)	
IRONSHORE SPECIALTY INS. CO.,	)	
	)	
Defendant.	)	

This Court, having presided over a Court Trial in this matter and considering the evidence and argument of the parties, finds as follows:

Findings of Fact

Plaintiffs Assurance Company of America and Northern Insurance Company of New York (collectively "Zurich") are insurance companies with a common corporate parent. Dkt. No. 26, 1:20-26. Defendant Ironshore Specialty Insurance Company ("Ironshore") is also an insurance company. Dkt. No. 6, 1:28-2:3.<sup>1</sup> In this case, Zurich seeks contribution from Ironshore as to sums the former incurred in connection with the defense and settlement of underlying lawsuits.

I. Policies

At issue in this case are lawsuits in which the following common insureds were named as

<sup>1</sup> Plaintiff American Guarantee and Liability Company ("American Guarantee") previously accepted an Offer of Judgment made by Ironshore. Dkt. No. 77. By virtue of this acceptance, a Consent Judgment was subsequently entered in favor of American Guarantee such that it is no longer a party to this action. Dkt. No. 78.

1 parties:

- 2 • Cedco, Inc. ("Cedco")
- 3 • Laird Whipple Concrete Construction, Inc. ("Laird Whipple")
- 4 • PR Construction Corp. ("PR Construction")
- 5 • Stewart & Sundell Concrete, Inc. ("Stewart & Sundell")
- 6 • Sunworld Landscape and Construction, LLC ("Sunworld")
- 7 • Universal Framing, LLC ("Universal Framing")

8 Zurich issued the following general liability insurance policies to Cedco:

- 9 • Policy No.: CON50022947 (effective 04/12/01-04/12/02); and
- 10 • Policy No.: CON50022947 (effective 04/12/02-04/12/03).

11 Exs. 1-2.

12 Zurich issued the following general liability insurance policies to Laird Whipple:

- 13 • Policy No.: SCP38949211 (effective 10/12/00-10/12/01).

14 Ex. 624.

15 Zurich issued the following general liability insurance policies to PR Construction:

- 16 • Policy No.: CON 33083339 (effective 08/01/99-08/01/00);
- 17 • Policy No.: CON 33083339 (effective 08/01/00-08/01/01); and
- 18 • Policy No.: CON 33083339 (effective 08/01/01-08/01/02).

19 Exs. 5-7.

20 Zurich issued the following general liability policies to Stewart & Sundell:

- 21 • Policy No.: 1849622 (effective 03/01/94-03/01/95)
- 22 • Policy No.: EPA24788847 (effective 03/01/95-03/01/96);
- 23 • Policy No.: EPA28258722 (effective 03/01/96-03/01/97);
- 24 • Policy No.: EPA30907464 (effective 03/01/97-03/01/98);
- 25 • Policy No.: EPA32604960 (effective 03/01/98-03/01/99);
- 26 • Policy No.: CON32604960 (effective 03/01/99-03/01/00);
- 27 • Policy No.: CON32604960 (effective 03/01/00-03/01/01); and
- 28 • Policy No.: CON32604960 (effective 03/01/01-03/01/02).



1 Exs. 11-18.

2 Zurich issued the following general liability policies to Sunworld:

- 3 • Policy No.: CON98713598 (effective 05/16/01-05/16/02).

4 Ex 21.

5 Zurich issued the following commercial general liability policies to Universal Framing:

- 6 • Policy No. SCP39574349 (effective 01/07/03-01/07/04);  
 7 • Policy No. SCP39574349 (effective 01/07/04-01/07/05);  
 8 • Policy No. SCP39574349 (effective 01/07/05-01/07/06); and  
 9 • Policy No. SCP39574349 (effective 01/07/06-01/07/07).

10 Exs 24-27.

11 Ironshore issued Cedco the following general liability policies:

- 12 • Policy No.: 018ER0905001 (effective 06/01/09-06/01/10); and  
 13 • Policy No.: 00194200 (effective 04/01/10-04/01/11).

14 Exs. 4, 505.

15 Ironshore issued Laird Whipple the following general liability policies:

- 16 • Policy No.: 017BW0905001 (effective 04/15/09-04/15/10); and  
 17 • Policy No.: 000242101 (effective 04/15/10-04/15/11).

18 Exs. 8-9.

19 Ironshore issued PR Construction the following general liability policy:

- 20 • Policy No.: 000115801 (effective 01/31/10-01/31/11).

21 Ex. 10.

22 Ironshore issued Stewart & Sundell the following commercial general liability policy:

- 23 • Policy No.: 012A80905001 (effective 03/01/09-03/01/10);  
 24 • Policy No.: 000167401 (effective 03/01/10-03/01/11).

25 Exs. 19-20.

26 Ironshore issued Sunworld the following policy:

- 27 • Policy No.: 00GN10905001 (effective 06/04/09-06/04/10).

28 Ex. 22.

1 Finally, Ironshore issued Universal Framing the following policy:

- 2 • Policy No.: 00T960905001 (effective 10/13/09-10/13/10).

3 Exs. 29.<sup>2</sup>

4 The policies Zurich and Ironshore issued include Commercial General Liability Coverage  
5 Forms that generally provide as follows:

6 We will pay those sums that the insured becomes legally obligated to  
7 pay as damages because of ... "property damage" to which this  
8 insurance applies. We will have the right duty to defend the insured  
9 against any 'suit' seeking those damages. However, we will have no  
10 duty to defend the insured against any "suit" seeking damages for ...  
11 'property damage' to which this insurance does not apply...

12 b. This insurance applies to ... "property damage" only if:

13 (1) The ... "property damage" is caused by an "occurrence" ... [and]

14 (2) The ... "property damage" occurs during the policy period.

15 ...

16 "Occurrence" means an accident, including continuous or repeated  
17 exposure to substantially the same general harmful conditions.

18 ...

19 "Property damage" means:

20 a. Physical injury to tangible property, including all resulting loss of  
21 use of that property.

22 The policies Zurich and Ironshore issued also provide as follows:

23 4. Other Insurance.

24 If other valid and collectible insurance is available to the insured for a  
25 loss we cover under Coverages A or B of this Coverage Part, our  
26 obligations are limited as follows:

27 ...

28 c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we  
will follow this method also. Under this approach each insurer

<sup>2</sup> Ironshore issued also issued Policy No. 00T960805001 (effective 10/13/08-10/13/09). Dkt. No. 28. Unlike the later policy, the 2008-2009 policy includes a Designated Work endorsement barring coverage for work completed prior to October 13, 2008. Dkt. No. 28, p. 50. Given the timing of the work at issue, this endorsement applies to bar coverage.

contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

Meanwhile, the policies only Ironshore issued each include Continuous or Progressive Injury Exclusion endorsements ("CP Exclusion") which provide in relevant part as follows:

This insurance does not apply to any ... "property damage":

1. which first existed, or is alleged to have first existed, prior to the inception of this policy. "Property damage" from "your work" ... performed prior to policy inception will be deemed to have first existed prior to the policy inception, unless such "property damage" is sudden and accidental and takes place within the policy period; or

2. which was, or is alleged to have been, in the process of taking place prior to the inception date of this policy, even if such ... "property damage" continued during this policy period; or

3. which is, or is alleged to be, of the same general nature or type as a condition, circumstance or construction defect which resulted in ... "property damage" prior to the inception date of this policy.

## II. Underlying Matters

Cedco was named as a party to the following underlying matters:

- Bagley v. All Drywall and Paint, Clark County Case No. A620609 ("Bagley");
- Blasco v. Rhodes Design, Clark County Case No. A578060 ("Blasco"); and
- Ishihama v. Terravita Home Construction Co., Clark County Case No. A632302 ("Ishihama").

Ex Nos. 47-52.

Laird Whipple was named as a party to the following underlying matters:

- Stacy v. American West Homes, Inc., Clark County Case No. A575959 ("Stacy");
- Cohen v. Nigro Desert Bloom, LLC, Clark County Case No. A591492 ("Cohen");
- Wright v. Carina Corp., Clark County Case No. A602989 ("Wright"); and
- Colford v. American West Homes, Inc., Clark County Case No. A593923 ("Colford").

Exs. 53-57, 70-71, 74-75.

PR Construction was named as a party to the following underlying matter:

- Epstein Family Trust v. Westgate Properties, Clark County Case No. A624664

1 ("Epstein").

2 Ex. 58-59.

3 Stewart & Sundell was named as a party to the following underlying matters:

- 4 • Aurora Glen HOA v. Pinnacle-Aurora II, LP, Clark County Case No. A605463
- 5 ("Aurora");
- 6 • Boyer v. PN II, Clark County Case No. A603841 ("Boyer");
- 7 • Mystic Bay HOA v. Richmond Amer. Homes, Clark County Case No. A611595
- 8 ("Mystic Bay"); and
- 9 • Torrey Pines HOA v. U.S. Home Corp., Clark County Case No. A571846 ("Torrey
- 10 Pines").

11 Exs. 51-52, 68-69, 72-73, 655, 657.

12 Sunworld was named as a party to the following underlying matter:

- 13 • Evers v. Fairway Pointe, LLC, Clark County Case No. A614799 ("Evers").

14 Ex. 60-61.

15 Finally, Universal Framing was named as party to the following underlying matters:

- 16 • Macias v. DW Arnold, Inc., Washoe County Case No. CV10-02863; and
- 17 • Larkin v. Comfort Residential, Washoe County Case No. CV09-03256.

18 Exs. 64-67.

19 In response to tenders, Ironshore disclaimed coverage in connection with each of the  
20 underlying matters. Exs. 512, 530, 557, 570, 584, 597, 605, 630, 654, 671, 705, 718, 743.

21 Zurich agreed to defend the mutual insureds in connection with each of the underlying  
22 matters, incurring a total of \$291,804 based on the following:

23	Aurora	\$15,467
24	Bagley	\$20,181
25	Blasco	\$17,611
26	Boyer	\$6,139
27	Cohen	\$38,258
28	Colford	\$27,746

1	Epstein	\$9,129
2	Evers	\$42,494
3	Ishihama	\$14,222
4	Larkin	\$26,468
5	Macias	\$8,180
6	Mystic Bay	\$23,063
7	Stacy	\$21,705
8	Torrey Pines	\$4,262
9	Wright	\$16,159

10 Exs. 382-411.

11       Additionally, Zurich agreed to contribute toward settlements of the claims asserted against  
 12 the insureds, reached in connection with each the underlying matters, incurring \$862,890 based on  
 13 the following contributions:

14	Aurora	\$22,222
15	Bagley	\$4,256
16	Blasco	\$183,000
17	Boyer	\$0 (waiver of costs)
18	Cohen	\$40,000
19	Colford	\$100,000
20	Epstein	\$200
21	Evers	\$9,000
22	Ishihama	\$4,000
23	Larkin	\$50,000
24	Macias	\$225,000
25	Mystic Bay	\$76,000
26	Stacy	\$76,000
27	Torrey Pines	\$17,778
28	Wright	\$55,434

Conclusions of Law

I. This Court Has Already Held That Ironshore Improperly Denied Coverage In Connection With Each Of The Underlying Lawsuits.

On September 30, 2014, this Court granted Plaintiffs' Motion for Partial Summary Judgment, and declared that Defendant Ironshore had a duty to defend its insured, Champion Masonry, in an underlying action styled Garcia v. Centex Homes (the Garcia Action). Dkt. No. 27. With respect to the Garcia Action, Ironshore denied a duty to defend its insured Champion Masonry, asserting that the Continuous or Progressive Injury or Damage exclusion precluded all possible coverage. The Court found that the complaint in the Garcia Action alleged damages potentially falling within the scope of the Ironshore Policy insuring agreement. Dkt. No. 27. Further, the complaint in Garcia was "vague as to the temporal implications of the alleged damages, and therefore, it is not clear on the face of the Garcia Complaint whether the alleged damages were or were not sudden and accidental." Dkt. No. 27, 6:10-13. Accordingly, this Court held that the exclusion relied upon by Ironshore did not eliminate the potential for coverage under the Ironshore policy and declared that Ironshore had a duty to defend Champion Masonry in the Garcia Action. Dkt. No. 27, 7, 2-4.

Thereafter, the Parties filed cross-motions for summary judgment, putting at issue Ironshore's duty to defend six (6) other insureds with respect to the balance of underlying actions, all of which Ironshore had declined coverage. In addressing these motions, this Court issued an Order which again found that a potential for coverage existed with respect to each of the insureds in each of the underlying actions and that the potential for coverage with respect to each was not eliminated by the Ironshore progressive damage exclusion. Dkt. No. 72. In so doing, this Court noted as follows:

This case arises from a dispute between co-insurers over coverage for sixteen separate underlying construction defect suits in Nevada state court. . . .

In each of these underlying cases, despite the fact that the insureds had commercial general liability policies with both Plaintiffs and Defendant Ironshore, they were defended and indemnified only by Plaintiffs. The insureds' policies with Defendant Ironshore afforded coverage between varying dates in the years 2009, 2010, and 2011. In

each case, Defendant Ironshore issued a denial letter stating that the insured's work was completed prior to the onset of the policy, and therefore coverage was not triggered pursuant to the policy's "Continuous or Progressive Injury or Damage Exclusion." See, e.g., (Jan. 24, 2011, Cedco Denial Letter p. 2, ECF No. 55-6); (Champion Masonry Denial Letter p. 2, ECF No. 59). In the instant case, Plaintiffs allege that the claims were wrongly denied by Defendant Ironshore, and that Defendant Ironshore had a duty to defend and indemnify the insureds in each of the sixteen underlying actions.

Dkt. No. 72, 1:22-2:25.

Of significance, this Court ruled that Ironshore owed a duty to defend in connection with each of the underlying matters. Dkt. No. 72, 7:5-15:6. This court noted that the allegations in seven of the remaining sixteen underlying actions were identical to those made in the Garcia Action and, as in Garcia, did not specify when the alleged property damage occurred and did not contain sufficient allegations from which to conclude the damage was not sudden and accidental. Having recognized that these allegations triggered Ironshore's duty to defend in Garcia, this Court held that Ironshore also had a duty to defend in the seven identical actions. This Court then analyzed the allegations in each of the remaining nine underlying actions and held that in each, allegations gave rise to the possibility of coverage under the Ironshore policies, a possibility that was not eliminated under the progressive damage exclusion, and that Ironshore's duty to defend was triggered in each.

In the cross motions, Ironshore argued that even if had a duty to defend in the underlying actions, Plaintiffs failed to establish that Ironshore had a duty to indemnify the insureds. This Court held that Ironshore mischaracterized the Plaintiffs' burden, as "where a nonparticipating co-insurer is found to have a duty to defend in an already settled action, the insurer attempting to disclaim coverage bears the burden of proving the applicability of any policy exclusions." Dkt. No. 72, 15:11-13. This Court went onto explain as follows:

Therefore, the question at issue is not whether Plaintiffs have sufficiently shown that Defendant Ironshore had a duty to indemnify, but instead whether Defendant Ironshore has sufficiently shown that it lacked a duty to indemnify in the underlying cases due to the exclusions in its policies. As Defendant Ironshore has not presented evidence demonstrating that the property damage alleged in the sixteen underlying cases fell within its policy exclusions, it has failed to carry this burden, and its Motion for Summary Judgment will accordingly be denied as to Plaintiffs' contribution claims.

1 Dkt. No. 72, 16:7-13.

2 This Court ruled that Ironshore, by improperly failing to defend, bears the burden of proving  
3 that it lacked a duty to indemnify and that “Defendant Ironshore has not presented evidence  
4 demonstrating that the property damage alleged in the sixteen underlying cases fell within its policy  
5 exclusions.” Dkt 72, 16:10-11.

6 In connection with a motion for reconsideration Ironshore filed, this Court reiterated its prior  
7 rulings, stating: “the Court found that Defendant Ironshore had a duty to defend its insureds in the  
8 underlying actions, and that Defendant Ironshore did not provide sufficient evidence for the Court  
9 to conclude that it lacked a duty to indemnify.” Dkt No. 84, 3:3-6. The Court denied the motion for  
10 reconsideration, finding neither clear error nor manifest injustice in the reasoning of its previous  
11 order. The Court expounded on its ruling as follows:

12 Additionally, the Court reiterates that Defendant Ironshore, as a  
13 nonparticipating co-insurer, bears the burden of demonstrating that  
14 the policy exclusion applies to each of the underlying actions. See,  
15 e.g., PMA Capital Ins. Co. v. Am. Safety Indem. Co., 695 F. Supp. 2d  
16 1124, 1125 (E.D. Cal. 2010) (“Once a party claiming coverage shows  
17 a potential for coverage under the coinsurer’s policy, the coinsurer  
18 must conclusively prove with undisputed evidence that no coverage  
19 existed under the policy.”). In the context of this case, this means that  
20 Defendant Ironshore bears the burden of showing that the damage at  
21 issue was not: (1) “sudden and accidental”; (2) “in the process of  
22 taking place prior to the inception date of [the] policy”; or (3) “of the  
23 same general nature or type as a condition, circumstance or  
24 construction defect which resulted in ‘bodily injury’ or ‘property  
25 damage’ prior to the inception date of [the] policy.” (Second  
26 Summary Judgment Order 8:1-14).

27 Dkt. No. 84, 4:22-25.

28 In summary, in prior rulings, this Court has concluded that:

- 29 1. Ironshore owed a duty to defend as to each underlying lawsuit at issue in this case;
- 30 2. Ironshore improperly denied coverage in connection with each of the underlying  
31 matters;
- 32 3. Ironshore, as the nonparticipating co-insurer bears the burden of demonstrating that a  
33 policy exclusion eliminated coverage with respect to the duty to indemnify; and
- 34 4. Ironshore failed to carry in its motions for summary judgment and reconsideration.

35 Dkt. Nos. 27, 72, 84.



II. Ironshore Has Not Met Its Burden Of Proving The Absence of Coverage.

When a duty to defend is shown, nonparticipating coinsurers are presumptively liable for both the costs of defense and settlement. Safeco Ins. Co. v. Superior Court, 140 Cal.App.4th 874 (2006); Employers Ins. Co. of Wausau v. Lexington Ins. Co., 2014 WL 4187842 (C.D. Cal. 2014); Acceptance Ins. Co. v. American Safety Risk Retention Group, Inc., 2011 WL 3475305 (S.D. Cal. 2011). By virtue of the settlement, the parties forgo their right to have liability established by a trier of fact as the settlement becomes presumptive evidence of the insured's liability and the amount thereof. Advent, Inc. v. National Union Fire Insurance Company of Pittsburgh, 2016 WL 7100489 (Cal. App. 2016); Westport Ins. Corp. v. Northern California Relief, 76 F.Supp.3d 869 (N.D. Cal. 2014); Assurance Co. of America v. National Fire & Marine Ins. Co., 2012 WL 1970017 (D. Nev. 2012). By refusing to participate, therefore, the recalcitrant coinsurer waives the right to challenge the reasonableness of defense costs and amounts paid in settlement because any other rule would render meaningless the insured's right to settle. Great American Ins. Co. v. Sequoia Ins. Co., 2016 WL 844819 (C.D. Cal. 2016); Federal Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh, PA, 2013 WL 1209665 (C.D. Cal. 2013).

When it is demonstrated that the non-participating insurer owed a duty to defend, the burden shifts to the non-participating insurer to prove the absence of coverage as the settling insurer need not prove actual coverage. Valley Forge Ins. Co. v. Zurich American Ins. Co., 2014 WL 4980302 (N.D. Cal. 2014); Axis Surplus Ins. Co. v. Glencoe Ins. Ltd., 204 Cal.App.4th 1214 (2012). The absence of coverage, therefore, constitutes an affirmative defense for which the non-participating insurer bears the burden of proof. St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mut. Ins. Co., 210 Cal.App.4th 645 (Cal. 2012); MGA Entertainment, Inc. v. Hartford Ins. Group, 2012 WL 628203 (C.D. Cal. 2012); PMA Capital Ins. Co. v. American Safety Indem. Co., 695 F.Supp.2d 1124 (E.D. Cal. 2010).

As the disclaiming insurer that improperly failed to defend, Ironshore bears the burden of proving the absence of coverage. Based on the evidence admitted at trial, Ironshore has not met this burden.

Ironshore's main argument is that the CP exclusion included in all of its policies bars

1 coverage. Ironshore, however, has failed to demonstrate that this exclusion applies to bar actual  
2 coverage.

3 Prong 1 of the CP Exclusion seeks to deem all damages arising from work completed before  
4 the inception of any of its policies as occurring outside of its policy period. The exclusion, however,  
5 does not apply to sudden damages. Ironshore has presented no evidence regarding when any of the  
6 damages actually occurred, and therefore whether any of the damages occurred suddenly. Absent  
7 this evidence, Ironshore cannot meet its burden of proving that none of the damages occurred  
8 suddenly.<sup>3</sup>

9 A separate consideration is the fact that the provision deeming that all damages occur  
10 outside of its policy period runs counter to the coverage otherwise available under the policy,  
11 creating an inherent ambiguity. See Saarman Construction, Ltd v. Ironshore Specialty Ins. Co.,  
12 2016 WL 4411814 (N.D. Cal. 2016). This Court agrees that the deemer sentence included in the CP  
13 Exclusion runs counter to the purpose and intent of the policy, creating an inherent ambiguity.

14 Prong 2 of the CP Exclusion seeks to bar coverage for damages "which . . . are in the  
15 process of taking place prior to the inception date of this policy and continue[ ]" while Prong 3  
16 seeks to bar coverage "which is, or is alleged to be, of the same general nature or type as a  
17 condition" as to damages which continue. At trial, Ironshore has failed to meet its burden of  
18 demonstrating that all damages at issue precede the inception of its policy and continue into its  
19 policy period. As the underlying lawsuits are largely silent as to the timing of the damages, no  
20 conclusive evidence exists regarding the timing of the damages. Given this, Ironshore cannot meet  
21 its burden.

22 The balance of arguments Ironshore asserts (i.e., purported known loss rule, "your work"  
23 exclusion) have been previously addressed by this Court and are unavailing.

24 Based on the foregoing, this Court concludes that Ironshore cannot meet its burden of  
25 proving the absence of actual coverage such that it is liable for both defense expenses and  
26 settlement payments Zurich has made.

27 \_\_\_\_\_  
28 <sup>3</sup> While prong 1 also requires that the damages result from an accident, this requirement already exists by virtue of the  
insuring agreement and its requirement that damages result from an "occurrence."

1 III. This Court Awards Zurich An Equal Share Of The Sums It Has Incurred.

2 Equitable contribution apportions costs among insurers when several insurers are obligated  
 3 to indemnify or defend the same loss or claim and one insurer has paid more than its share of the  
 4 loss or defended the action without any participation by the others. Travelers Property Casualty  
 5 Company of America v. Amica Mutual Ins. Co., 2016 WL 317657 (D. Nev. 2016), citing Hudson  
 6 Ins. Co. v. Colony Ins. Co., 624 F.3d 1264, 1267 (9th Cir. 2010). Equitable contribution is implied  
 7 by law and designed to prevent the potentially unfair result that would occur if the company to pay  
 8 first were left to cover the entire loss, and therefore exists to ensure that one insurer does not profit  
 9 at the expense of another. Fireman's Fund Ins. Co. v. Maryland Cas. Co., 65 Cal. App. 4th 1279,  
 10 1296 (1998); Howard v. American Nat. Fire Ins. Co., 187 Cal.App.4th 498 (2010).

11 By virtue of the rulings made herein, this Court concludes that Zurich is entitled to  
 12 contribution from Ironshore.

13 There is no fixed rule for allocating costs and expenses among primary insurers covering the  
 14 same loss. Evanston Ins. Co. v. Western Community Ins. Co., 2016 WL 1555706 (D. Nev. 2016);  
 15 North American Specialty Ins. Co. v. National Fire & Marine Ins. Co., 2013 WL 1332205 (D. Nev.  
 16 2013). Thus, allocation is a decision that ultimately rests in the discretion of the Court. See  
 17 Centennial Ins. Co. v. United States Fire Ins. Co., 88 Cal.App.4th 105 (2001); Maryland Casualty  
 18 Co. v. Nationwide Mutual Ins. Co., 81 Cal.App.4th 1082, 1089 (2000).

19 The policies issued by both Zurich and Ironshore each include provisions which explicitly  
 20 state that an equal share approach will be followed if the other available insurance which exists  
 21 permits for contribution by equal shares. Given this, the language of the policies themselves  
 22 support an equal shares allocation, a model other Courts have followed. See Harleysville Mut. Ins.  
 23 Co. v. Hartford Cas. Ins. Co., 90 F.Supp.3d 526 (E.D.N.C. 2015) Travelers Indem. Co. of America  
 24 v. AAA Waterproofing, 2014 WL 201726 (D. Colo. 2014); Residence Mut. Ins. Co. v. Travelers  
 25 Idem. Co. of CT, 26 F.Supp.3d 965 (C.D. Cal. 2104); Carolina Cas. Ins. Co. v. Travelers Prop. Cas.  
 26 Co., 90 F.Supp.3d 304 (D.N.J. 2014).

27 This Court is aware that there are various other allocation models, and that Courts in other  
 28 jurisdictions have employed alternate models in allocating losses between insurers (i.e., number of

limits, "time on risk," etc.) based on the unique facts before them. In this case, difficulty exists in employing alternate models as not only is the timing of the damages is unknown, the evidence provided this Court is unclear regarding when construction work was performed and or completed. For this reason, this Court declines to adopt a different approach.

Based on the foregoing, this Court concludes that fairness and equity weigh in favor of a equal shares approach.

The policies issued by both Zurich and Ironshore include deductible endorsements generally providing that any coverage obligation attaches in excess of certain sums. Ironshore policies contain varying deductible amounts - \$5,000 for Universal Framing, \$25,000 for Stewart & Sundell and \$10,000 for all other trades. While Zurich's policies generally include lower amounts, payment records generally reflect that Zurich largely received payments back from insureds for any deductible amounts owing.

While the parties agree that deductible amounts may be considered by this Court in reaching an appropriate final allocation, they disagree as to how to do so. Zurich takes the position that the deductible amount should be deducted from the gross amount since its payments offset against the deductible owing under the policies Ironshore issued. Ironshore, in contrast, argues that the deductible amount should be deducted from its net share.

This Court agrees with Zurich and concludes in equity that Zurich's payments offset against any deductible amount owing under the policies Ironshore issued such that any reduction applies to the gross amount incurred, and not Ironshore's net share. See Continental Cas. Co. v. St. Paul Surplus Lines Ins. Co., 803 F.Supp.3d 1113 (E.D. Cal. 2011), citing Montgomery Ward & Co., Inc. v. Imperial Cas. & Indem. Co., 81 Cal.App.4th 356, 370 (2000) and holding that insurance can be used to offset against a deductible in another insurer's policy.

In applying these facts and law, this Court concludes that net amount incurred by Zurich, after reduction for deductibles, is \$976,466 based on the following:

<b>Insured/Matter</b>	<b>Total Incurred</b>	<b>Deductible</b>	<b>Net Incurred</b>
Cedco - Bagley	\$24,437	\$10,000	\$14,437
Cedco - Blasco	\$200,611	\$10,000	\$190,611

1	Cedco - Ishihama	\$18,222	\$10,000	\$8,222
2	Laird - Cohen	\$78,258	\$10,000	\$68,258
3	Laird - Colford	\$127,746	\$10,000	\$117,746
4	Laird - Stacy	\$97,705	\$10,000	\$87,705
5	Laird - Wright	\$71,593	\$10,000	\$61,593
6	PR Constr. - Epstein	\$9,329	\$10,000	\$0
7	Stewart - Aurora	\$37,689	\$25,000	\$12,689
8	Stewart - Boyer	\$6,139	\$25,000	\$0
9	Stewart - Mystic Bay	\$99,063	\$25,000	\$74,063
10	Stewart - Torrey Pines	\$22,040	\$25,000	\$0
11	Sunworld - Evers	\$51,494	\$10,000	\$41,494
12	Universal - Macias	\$233,180	\$5,000	\$228,180
13	Universal Larkin	\$76,468	\$5,000	\$71,468
14	<b>Totals</b>	<b>\$1,153,974</b>		<b>\$976,466</b>

15 Based on an equal shares approach, this Court awards Zurich \$488,233, constituting one half  
16 of \$976,466, exclusive of any entitlement to prejudgment interest.

17 To the extent not directly addressed herein, this Court finds any other positions furthered by  
18 Ironshore to be unavailing, and therefore not impacting the rulings made herein.

19 IT IS SO ORDERED.

20 Dated:

21  
22  
23 \_\_\_\_\_  
DISTRICT COURT JUDGE  
24  
25  
26  
27  
28

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6  
 7  
 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF NEVADA

10 ASSURANCE CO. OF AMERICA, et al.	)	Case No.: 2:13-cv-2191-GMN-CWH
	)	
11 Plaintiffs,	)	<u>AMENDED PROPOSED ORDER RE</u>
	)	<u>TRIAL</u>
12 vs.	)	
	)	
13 IRONSHORE SPECIALTY INS. CO.,	)	
	)	
14 Defendant.	)	
	)	

15  
 16 Pursuant to Local Rule 16-3, Plaintiffs Assurance Company of America and Northern  
 17 Insurance Company of New York (collectively "Plaintiffs") and Defendant Ironshore Specialty  
 18 Insurance Company ("Ironshore") submit the following Amended Proposed Order Re Trial:<sup>1</sup>

19 I.

20 Statement Of The Action And The Contentions Of The Parties:

21 Agreed Preliminary Statement: The Court has ruled that Ironshore owed a duty to defend in  
 22 each underlying action.

23 Plaintiffs' Statement: This matter is a coverage dispute between insurers who issued  
 24 commercial general liability insurance policies to common insureds, all of whom were named as  
 25 defendants in underlying construction defect matters. Plaintiffs provided a defense to the common  
 26 insureds and/or funded settlements on their behalf. Defendants disclaimed coverage and refused to

27  
 28 <sup>1</sup> Plaintiff American Guarantee & Liability is no longer a party to this case by virtue of the Consent Judgment entered in its favor. Dkt. No. 79.

1 defend the common insureds. In this case, Plaintiffs seek reimbursement from Defendant for sums  
2 incurred in defending the common insureds and funding the settlements reached on their behalf.

3 This Court has held that Defendant both owed a duty to defend in connection with each of  
4 the underlying matters and bears the burden proving that no coverage existed under the policies it  
5 issued by virtue of improperly disclaiming coverage. See Dkt. Nos. 72, 84. Plaintiffs respectfully  
6 submit that Ironshore will be unable to meet its burden of proving that no coverage existed under  
7 the policies it issued. Based on the evidence offered at trial regarding the sums it incurred,  
8 Plaintiffs, pursuant to the contribution causes of action pled in the Second Amended Complaint -  
9 Dkt. No. 15 ("SAC") will request that this Court award it damages equal to Defendant's equitable  
10 share of the sums incurred.

11 Defendant's Statement:

12 Ironshore owed no duty to indemnify the insureds because evidence extrinsic to the  
13 complaints in the underlying actions, including admissions by Plaintiffs themselves, establishes that  
14 the Continuous or Progressive Injury or Damage Exclusion ("CP Exclusion") applies, and that the  
15 "sudden and accidental" exception to the CP Exclusion (applicable to only the first of the CP  
16 Exclusion's three paragraphs), as to which Plaintiffs have the burden of proof, does not apply.  
17 Ironshore has overcome any presumption of coverage by, at least, a preponderance of evidence  
18 relevant to the CP Exclusion, and Plaintiffs can cite no evidence, let alone meet their burden of  
19 proof, that supports application of the "sudden and accidental" exception. A separate endorsement,  
20 the Prior Work Exclusion, found in one Ironshore policy, bars coverage for work performed prior to  
21 a date that is years after the insured in question performed the work at issue, thereby eliminating  
22 coverage for two underlying actions.

23 In addition, with respect to several of the underlying actions, the damage at issue was to the  
24 insured's own work, and therefore the "Your Work" exclusion applies. Moreover, because several  
25 of the insureds knew of the claims against them before the inception of the relevant Ironshore  
26 policies, the Known Loss Rule bars coverage. At least one of the underlying claims does not even  
27 fall within the Insuring Agreement of the Ironshore policies because the damage existed before the  
28 policy inception date or because the claim was for replacing the insured's substandard work, and

1 therefore was not "damages because of ... 'property damage.'" In addition, for several of the  
 2 underlying actions, Plaintiffs and Ironshore did not even insure the same entity, precluding  
 3 Plaintiffs from recovering any amount from Ironshore.

4 Furthermore, Plaintiffs are not entitled to recover defense expenses incurred before the  
 5 claims were tendered to Ironshore. Any recovery by Plaintiffs must also take into account the  
 6 Ironshore policy deductibles; the deductibles are not included in the risk shared by Plaintiffs and  
 7 Ironshore, as required for contribution claims, and therefore must be deducted from any recovery.  
 8 Moreover, the Ironshore policies require that the deductibles be satisfied before any policy benefits  
 9 are payable. Finally, any formula for sharing expenses and settlement amounts that the Court  
 10 adopts must take into account the respective number of years Plaintiffs and Ironshore were on the  
 11 risk at issue, the policy limits of the respective policies of Plaintiffs and Ironshore, the  
 12 reasonableness of the defense expenses incurred, and any other equitable factors the Court may  
 13 wish to consider.

## 14 II.

### 15 Statement of Jurisdiction:

16 Ironshore removed this matter from State Court. Ironshore and Zurich (collectively  
 17 "Parties") agree that this Court has jurisdiction pursuant to 28 U.S.C. 1447 as the parties are diverse  
 18 and the amount at issue exceeds \$75,000.

## 19 III.

20 The following facts are admitted by the parties and require no proof:

### 21 A. Facts of General Applicability

- 22 1. The allegations in each underlying complaint are nonspecific as to when  
 23 property damage first existed, excluding *Blasco*, *Aurora Glen*, and *Torrey Pines*.
- 24 2. The construction work in each underlying action was performed prior to the  
 25 inception date of the earliest applicable Ironshore policy.
- 26 3. Neither party has evidence of any sudden property damage with respect to  
 27 any underlying case.
- 28 4. Plaintiffs accepted the defense of each underlying case.



1           B.     Facts Re Specific Underlying Actions

2                     5.     Plaintiffs incurred the following defense costs with respect to each  
3 underlying matter:

4	Aurora	\$15,467
5	Bagley	\$20,181
6	Blasco	\$17,611
7	Boyer	\$6,139
8	Cohen	\$38,258
9	Colford	\$27,746
10	Epstein	\$9,129
11	Evers	\$42,494
12	Ishihama	\$14,222
13	Larkin	\$26,468
14	Macias	\$8,180
15	Mystic Bay	\$23,063
16	Stacy	\$21,705
17	Torrey Pines	\$4,262
18	Wright	\$16,159

19                     6.     Plaintiffs incurred the following indemnity payments with respect to each  
20 underlying matter:

21	Aurora	\$22,222
22	Bagley	\$4,256
23	Blasco	\$183,000
24	Boyer	\$0 (waiver of costs)
25	Cohen	\$40,000
26	Colford	\$100,000
27	Epstein	\$200
28	Evers	\$9,000

1                   Ishihama       \$4,000  
 2                   Larkin         \$50,000  
 3                   Macias         \$225,000  
 4                   Mystic Bay     \$76,000  
 5                   Stacy          \$76,000  
 6                   Torrey Pines   \$17,778  
 7                   Wright         \$55,434

8                   7.       Facts Re Insureds and Underlying Actions

9                   a.       Cedco, Inc. ("Cedco") was named as a cross-defendant in a matter  
 10                   styled Bagley v. All Drywall & Paint, Inc., Clark County Case No: A620609 ("Bagley").

11                   b.       Cedco was named as a cross-defendant in a matter styled Blasco v.  
 12                   Rhodes Ranch LP, Clark County Case No: A578060 ("Blasco").

13                   c.       Cedco was named as a cross-defendant in a matter styled Ishihama v.  
 14                   Terravita Home Construction Co., Inc., Clark County Case No: A632032 ("Ishihama").

15                   d.       Laird Whipple Concrete Construction, Inc. ("Laird Whipple") was  
 16                   named as a cross-defendant in a matter styled Cohen v. Nigor Desert Bloom, LLC, Clark County  
 17                   Case No: A591492 ("Cohen").

18                   e.       Laird Whipple was named as a cross- defendant in a matter styled  
 19                   Colford v. American West Homes, Inc., Clark County Case No: A593923 ("Colford").

20                   f.       Laird Whipple was named as a cross-defendant in a matter styled  
 21                   Stacy v. American West Homes, Inc., Clark County Case No: A575959 ("Stacy").

22                   g.       Laird Whipple was named as a cross-defendant in a matter styled  
 23                   Wright v. Carina Corporation, Clark County Case No: A602989 ("Wright").

24                   h.       PR Construction Co. was named as a cross-defendant in a matter  
 25                   styled Epstein Family Trust v. Westgate Properties, Ltd., Clark County Case No: A624664  
 26                   ("Epstein").

27                   i.       Stewart & Sundell Concrete, Inc. ("Stewart & Sundell") was named as  
 28                   a cross-defendant in a matter styled Aurora Glen HOA v. Pinnacle-Aurora II LP, Clark County Case

No: A605463 ("Aurora Glen").

j. Stewart & Sundell was named as a cross-defendant in a matter styled Boyer v. Rhodes Ranch LP, Clark County Case No: A603841 ("Boyer").

k. Stewart & Sundell was named as a cross-defendant in a matter styled Mystic Bay HOA v. Richmond American Homes of Nevada, Inc., Clark County Case No: A611595 ("Mystic Bay").

l. Stewart & Sundell was named as a cross-defendant in a matter styled Wright v. Carina Corporation, Clark County Case No: A602989 ("Wright").

m. Sunworld Landscape & Construction, LLC ("Sunworld") was named as a cross-defendant in a matter styled Evers v. Fairway Pointe, LLC, Clark County Case No: A614799 ("Evers").

n. Universal Framing, LLC ("Universal") was named as a cross-defendant in a matter styled Larkin v. Comfort Residential Partners, LLC, Washoe County Case No: CV09-03256 ("Larkin").

o. Universal was named as a cross-defendant in a matter styled Macias v. D.W. Arnold, Inc., Washoe County Case No: CV10-02863 ("Macias").

p. Ironshore disclaimed coverage and refused to defend Cedco in Bagley.

q. Ironshore disclaimed coverage and refused to defend Cedco in Blasco.

r. Ironshore disclaimed coverage and refused to defend Cedco in Ishihama.

s. Ironshore disclaimed coverage and refused to defend Laird Whipple in Cohen.

t. Ironshore disclaimed coverage and refused to defend Laird Whipple in Colford.

u. Ironshore disclaimed coverage and refused to defend Laird Whipple in Stacy.

- 1 v. Ironshore disclaimed coverage and refused to defend Laird Whipple  
2 in Wright.
- 3 w. Ironshore disclaimed coverage and refused to defend PR Construction  
4 in Epstein.
- 5 x. Ironshore disclaimed coverage and refused to defend Stewart &  
6 Sundell in Aurora Glen.
- 7 y. Ironshore disclaimed coverage and refused to defend Stewart &  
8 Sundell in Boyer.
- 9 z. Ironshore disclaimed coverage and refused to defend Stewart &  
10 Sundell in Mystic Bay.
- 11 aa. Ironshore disclaimed coverage and refused to defend Stewart &  
12 Sundell in Wright.
- 13 bb. Ironshore disclaimed coverage and refused to defend Sunworld in  
14 Evers.
- 15 cc. Ironshore disclaimed coverage and refused to defend Universal in  
16 Larkin.
- 17 dd. Ironshore disclaimed coverage and refused to defend Universal in  
18 Macias.
- 19 ee. Zurich provided a defense to Cedco in Bagley.
- 20 ff. Zurich provided a defense to Cedco in Blasco.
- 21 gg. Zurich provided a defense to Cedco in Ishihama.
- 22 hh. Zurich provided a defense to Laird Whipple in Cohen.
- 23 ii. Zurich provided a defense to Laird Whipple in Colford.
- 24 jj. Zurich provided a defense to Laird Whipple in Stacy.
- 25 kk. Zurich provided a defense to Laird Whipple in Wright.
- 26 ll. Zurich provided a defense to PR Construction in Epstein.
- 27 mm. Zurich provided a defense to Stewart & Sundell in Aurora Glen.
- 28 nn. Zurich provided a defense to Stewart & Sundell in Boyer.

- oo. Zurich provided a defense to Stewart & Sundell in Mystic Bay.
- pp. Zurich provided a defense to Stewart & Sundell in Wright.
- qq. Zurich provided a defense to Sunworld in Evers.
- rr. Zurich provided a defense to Universal in Larkin.
- ss. Zurich provided a defense to Universal in Macias.
- tt. Zurich funded a settlement on behalf of Cedco in Bagley.
- uu. Zurich funded a settlement on behalf of Cedco in Blasco.
- vv. Zurich funded a settlement on behalf of Cedco in Ishihama.
- ww. Zurich funded a settlement on behalf of Laird Whipple in Cohen.
- xx. Zurich funded a settlement on behalf of Laird Whipple in Colford.
- yy. Zurich funded a settlement on behalf of Laird Whipple in Stacy.
- zz. Zurich funded a settlement on behalf of Laird Whipple in Wright.
- aaa. Zurich funded a settlement on behalf of PR Construction in Epstein.
- bbb. Zurich funded a settlement on behalf of Stewart & Sundell in Aurora Glen.
- ccc. Zurich funded a settlement on behalf of Stewart & Sundell in Mystic Bay.
- ddd. Zurich funded a settlement on behalf of Stewart & Sundell in Wright.
- eee. Zurich funded a settlement on behalf of Sunworld in Evers.
- fff. Zurich funded a settlement on behalf of Universal in Larkin.
- ggg. Zurich funded a settlement on behalf of Universal in Macias.

10. Facts Re Ironshore Policies

- 1. The Insuring Agreement of the Ironshore policies provides in part:
  - a. We will pay those sums that the insured becomes legally obligated to pay as damages because of ... 'property damage' to which this insurance applies. We will have the right duty to defend the insured against any 'suit' seeking those damages. However, we will have no duty to defend the insured against any 'suit' seeking damages for ... 'property damage' to which this insurance does not apply...
  - b. This insurance applies to ... 'property damage' only if:
    - (1) The ... 'property damage' is caused by an 'occurrence' ... [and]

(2) The ... 'property damage' occurs during the policy period.

2. The Ironshore policies alleged in plaintiffs' Second Amended Complaint ("Ironshore policies") include the following definitions, excerpted as follows:

#### **SECTION V – DEFINITIONS**

**13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**16.** "Products-completed operations hazard":

a. Includes all ... "property damage" occurring away from premises you own or rent and arising out of "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. ...

**17.** "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it ...

**22.** "Your work"

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

3. The Ironshore policies contain certain exclusions to which "[t]his insurance does not apply," including exclusion *l*, "Damage To Your Work," which excludes coverage for "[p]roperty damage" to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard.'"

4. The Ironshore policies' declarations pages list specific "Endorsements Attached To This Policy," one of which is "Continuous or Progressive Injury Exclusion" (the "CP Exclusion"), which provides in relevant part:

1 This insurance does not apply to any ... "property damage":

- 2 1. which first existed, or is alleged to have first existed, prior to the inception of  
3 this policy. "Property damage" from "your work" ... performed prior to policy  
4 inception will be deemed to have first existed prior to the policy inception, unless  
5 such "property damage" is sudden and accidental and takes place within the  
6 policy period; or
- 7 2. which was, or is alleged to have been, in the process of taking place prior to the  
8 inception date of this policy, even if such ... "property damage" continued during this  
9 policy period; or
- 10 3. which is, or is alleged to be, of the same general nature or type as a condition,  
11 circumstance or construction defect which resulted in ... "property damage" prior  
12 to the inception date of this policy.

13 5. An Ironshore policy insuring Universal Framing, Inc. includes an  
14 Endorsement titled "Exclusion – Designated Work", which states in part: "This insurance does not  
15 apply to 'bodily injury' or 'property damage' included in the 'products-completed operations hazard'  
16 and arising out of 'your work' shown in the Schedule." The Schedule states: "Description of your  
17 work: 'Your work' performed prior to October 13, 2008."

18 6. Each Ironshore policy at issue contains a \$10,000 per-occurrence deductible  
19 applicable to both defense and indemnity for the claims at issue; the sole exceptions is the Ironshore  
20 Stewart & Sundell policy, which has a per-occurrence deductible of \$25,000 applicable to both  
21 defense and indemnity while the Universal policy in effect 2009-2010 includes a \$5,000 per  
22 occurrence deductible.

23 7. Midlands Claim Administrators ("Midlands") served as Ironshore's third-  
24 party claim administrator for the claims at issue.

25 8. Midlands investigated each claim, based on all information it had obtained  
26 from various sources, including defense counsel for the insured or other parties in the underlying  
27 actions, the adjusters for one or more of the Plaintiffs herein, and pertinent public websites, among  
28 other sources.

9. Midlands adjusters also documented their handling of the claims in the Claim  
Notes for each claim file.

10. Midlands then submitted its recommendations to Ironshore, and, with

1 Ironshore's approval, Midlands responded to the tendering party.

2 INSURED: CEDCO

3 11. Cedco and Assurance Company of America ("Assurance") entered into an  
4 insurance contract, in effect from April 12, 2001 to April 12, 2002.

5 12. Cedco and Assurance entered into an insurance contract, in effect from April  
6 12, 2002 to April 1, 2003.

7 13. Cedco and Ironshore entered into an insurance contract, in effect from June 1,  
8 2009 to June 1, 2010 ("the Ironshore-Cedco Policy")

9 Bagley Action

10 14. Cedco's scope of work was installation of stucco and masonry block walls at  
11 the homes.

12 Blasco Action

13 15. The Blasco First Amended Complaint pre-dates the inception of the  
14 Ironshore-Cedco Policy.

15 16. The homes at issue in Blasco were sold between 5/22/98 to 5/5/02, prior to  
16 inception of the Ironshore policy.

17 Ishihama Action

18 17. The property at issue in Ishihama was sold on or before 7/10/03, prior to the  
19 inception of the Ironshore policy.

20 18. Cedco's scope of work for this project was installation of stucco.

21 19. Damage attributable to Cedco included cracked stucco.

22 INSURED: LAIRD WHIPPLE

23 20. Laird Whipple Concrete Construction, Inc., Raymond Laird, and others and  
24 Northern Insurance Company of New York ("Northern") entered into an insurance contract, in  
25 effect from August 1, 1999 to August 1, 2000.

26 21. Laird Whipple Concrete Construction, Inc., Raymond Laird, and others and  
27 Assurance entered into an insurance contract, in effect from August 1, 2000 to August 1, 2001.  
28



22. Laird Whipple Concrete Construction, Inc., Southwest Foundations Inc. ("Southwest"), and others and Assurance entered into an insurance contract, in effect from August 1, 2001 to August 1, 2002.

23. Laird Whipple Concrete Construction, Southwest, and others and Ironshore entered into an insurance contract, in effect from April 15, 2009 to April 15, 2010 ("the Ironshore-Laird Whipple Policy").

Cohen action

24. Laird Whipple Concrete Construction, Inc. was named as a third-party defendant in a matter styled Cohen v. Nigor Desert Bloom, LLC, Clark County Case No: A591492 ("Cohen").

25. Laird Whipple Concrete Construction, Inc. was a party to the subcontract for the work at issue.

Colford Action

26. Raymond Laird Whipple dba Laird Whipple Concrete Construction ("Raymond dba") was named as a third-party defendant in a matter styled Colford v. American West Homes, Inc., Clark County Case No: A593923 ("Colford").

27. Raymond dba was one of many subcontractors that worked on the project at issue.

28. The Colford action was tendered to Ironshore by letter dated December 15, 2010.

Stacy Action

29. Raymond dba was named as a third-party defendant in a matter styled Stacy v. American West Homes, Inc., Clark County Case No: A575959 ("Stacy").

30. Laird Whipple Concrete Construction, Inc. was a party to the subcontract for the work at issue.

31. Laird Whipple Concrete Construction, Inc. was one of many subcontractors that worked on the project at issue.

Wright Action

1                   32.     Southwest Foundations, Inc. was named as a third-party defendant in a matter  
2 styled Wright v. Carina Corporation, Clark County Case No: A602989 ("Wright").

3                   33.     Southwest Foundations, Inc. was one of many subcontractors that worked on  
4 the project at issue.

5 INSURED: PR CONSTRUCTION

6                   34.     PR Construction Co., Inc. and Northern entered into an insurance contract, in  
7 effect from September 30, 1997 to September 30, 1998.

8                   35.     PR Construction Co. Inc. and Assurance entered into an insurance contract,  
9 in effect from October 12, 2001 to October 12, 2002.

10                  36.     PR Construction Corporation and Ironshore entered into an insurance  
11 contract, in effect from January 31, 2010 to January 31, 2011 ("the Ironshore-PR Construction  
12 Policy").

13 Epstein action

14                  37.     PR Construction Co. was named as a third-party defendant in a matter styled  
15 Epstein Family Trust v. Westgate Properties, Ltd., Clark County Case No: A624664 ("Epstein").

16                  38.     PR Construction Co. was one of many subcontractors that worked on the  
17 project at issue.

18 INSURED: STEWART & SUNDELL

19                  39.     Stewart & Sundell Concrete, Inc. ("Stewart & Sundell") and Northern  
20 entered into an insurance contract, in effect from March 1, 1994 to March 1, 1995.

21                  40.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
22 from March 1, 1995 to March 1, 1996.

23                  41.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
24 from March 1, 1996 to March 1, 1997.

25                  42.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
26 from March 1, 1997 to March 1, 1998.

27                  43.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
28 from March 1, 1998 to March 1, 1999.

1                   44.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
2 from March 1, 1999 to March 1, 2000.

3                   45.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
4 from March 1, 2000 to March 1, 2001.

5                   46.     Stewart & Sundell and Northern entered into an insurance contract, in effect  
6 from March 1, 2001 to March 1, 2002.

7                   47.     Stewart & Sundell Concrete, Inc. and Ironshore entered into an insurance  
8 contract, in effect from March 1, 2010 to March 1, 2011 ("the Ironshore-Stewart & Sundell  
9 Policy").

10                   Aurora Glen Action

11                   48.     Stewart & Sundell Concrete, Inc. was named as a third-party-defendant in a  
12 matter styled Aurora Glen HOA v. Pinnacle-Aurora II LP, Clark County Case No: A605463  
13 ("Aurora Glen").

14                   49.     Stewart & Sundell was one of many subcontractors that worked on the  
15 project at issue.

16                   Boyer Action

17                   50.     Stewart & Sundell was named as a third-party defendant in a matter styled  
18 Boyer v. Rhodes Ranch LP, Clark County Case No: A603841 ("Boyer").

19                   51.     Stewart & Sundell was one of many subcontractors that worked on the  
20 project at issue.

21                   52.     The Boyer action was tendered to Ironshore by letter dated September 14,  
22 2010.

23                   53.     Information obtained by Ironshore showed that Stewart & Sundell completed  
24 its work no later than 2001.

25                   Mystic Bay Action

26                   54.     The Mystic Bay action was tendered to Ironshore by letter dated January 6,  
27 2010.

1                   55.     The property damage alleged by the Mystic Bay plaintiffs included damage  
2 to Stewart & Sundell's own work.

3                   Torrey Pines Action

4                   56.     The Torrey Pines action was tendered to Ironshore by letter dated October 15,  
5 2010.

6                   INSURED: SUNWORLD

7                   57.     Sunworld Landscape & Construction LLC ("Sunworld") and Northern  
8 entered into an insurance contract, in effect from May 16, 1999 to May 16, 2000.

9                   58.     Sunworld and Northern entered into an insurance contract, in effect from  
10 May 16, 2000 to May 16, 2001.

11                  59.     Sunworld and Assurance entered into an insurance contract, in effect from  
12 May 16, 2001 to May 16, 2002.

13                  60.     Sunworld and Ironshore entered into an insurance contract, in effect from  
14 June 4, 2009 to June 4, 2010 ("the Ironshore-Sunworld Policy").

15                  INSURED: UNIVERSAL FRAMING

16                  61.     Tom Hopson dba: Universal Framing and Assurance entered into an  
17 insurance contract, in effect from January 7, 2002 to January 7, 2003.

18                  62.     Universal Framing LLC and Northern entered into an insurance contract, in  
19 effect from January 7, 2003 to January 7, 2004.

20                  63.     Universal Framing LLC and Northern entered into an insurance contract, in  
21 effect from January 7, 2004 to January 7, 2005.

22                  64.     Universal Framing LLC and Northern entered into an insurance contract, in  
23 effect from January 7, 2005 to January 7, 2006.

24                  65.     Universal Framing LLC and Maryland Casualty Company ("Maryland  
25 Casualty") entered into an insurance contract, in effect from January 7, 2006 to January 7, 2007.

26                  66.     Ironshore issued a policy to "Universal Framing, Inc." in effect from  
27 October 13, 2008 to June October 13, 2009 ("the Ironshore-Universal Framing Policy").  
28

67. The Ironshore-Universal Framing Policy includes an Exclusion – Designated Work for "your work" performed prior to October 13, 2008.

68. Ironshore issued a second policy in effect October 13, 2009 through October 13, 2010 that affords coverage to Universal Framing, LLC., a copy of which was produced in this case. Ironshore contends that because this policy is not specifically identified in the SAC, it is not at issue. Plaintiffs contend otherwise.

#### IV.

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

None.

#### V.

The following are the issues of fact to be tried and determined upon trial:

##### 1. Plaintiffs' Contested Facts

a. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore can present evidence to meet its burden of conclusively proving the absence of coverage for Cedco in Bagley.

b. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore can present evidence to meet its burden of conclusively proving the absence of coverage for Cedco in Blasco.

c. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore can present evidence to meet its burden of conclusively proving the absence of coverage for Cedco in Ishihama.

d. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore can present evidence to meet its burden of conclusively proving the absence of coverage for Laird Whipple in Cohen.

e. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore can present evidence to meet its burden of conclusively proving the absence of coverage for Laird Whipple in Colford.

1 f. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
2 can present evidence to meet its burden of conclusively proving the absence of coverage for  
3 Laird Whipple in Stacy.

4 g. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
5 can present evidence to meet its burden of conclusively proving the absence of coverage for  
6 Laird Whipple in Wright.

7 h. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
8 can present evidence to meet its burden of conclusively proving the absence of coverage for  
9 PR Construction in Epstein.

10 i. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
11 can present evidence to meet its burden of conclusively proving the absence of coverage for  
12 Stewart & Sundell in Aurora Glen.

13 j. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
14 can present evidence to meet its burden of conclusively proving the absence of coverage for  
15 Stewart & Sundell in Aurora Glen.

16 k. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
17 can present evidence to meet its burden of conclusively proving the absence of coverage for  
18 Stewart & Sundell in Boyer.

19 l. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
20 can present evidence to meet its burden of conclusively proving the absence of coverage for  
21 Stewart & Sundell in Mystic Bay.

22 m. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
23 can present evidence to meet its burden of conclusively proving the absence of coverage for  
24 Stewart & Sundell in Wright.

25 n. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
26 can present evidence to meet its burden of conclusively proving the absence of coverage for  
27 Sunworld in Evers.

28 o. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore

1 can present evidence to meet its burden of conclusively proving the absence of coverage for  
 2 Universal in Larkin.

3 p. In accordance with this Court's Orders [Dkt. No. 72, 84], whether Ironshore  
 4 can present evidence to meet its burden of conclusively proving the absence of coverage for  
 5 Universal in Macias.

6 Defendant's Contested Facts

7 INSURED: CEDCO

8 Blasco Action

9 1. The Blasco First Amended Complaint alleges that defendants caused property  
 10 damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

11 2. The Blasco First Amended Complaint alleges that the property damage  
 12 existed at the time of sale of the subject homes.

13 3. The Blasco First Amended Complaint does not allege that any sudden and  
 14 accidental property damage attributable to Cedco took place during the Ironshore-Cedco Policy  
 15 period

16 Ishihama Action

17 4. The Ishihama complaint alleges that the property damage existed at the time  
 18 of the sale of the subject property

19 5. The Ishihama complaint alleges that defendants caused property damage by  
 20 tortiously failing to exercise reasonable care in the construction of the subject homes.

21 6. Any alleged property damage that could have resulted from Cedco's work  
 22 was already in the process of taking place prior to the inception of the Ironshore-Cedco Policy.

23 7. Any alleged property damage was of the same general nature or type as a  
 24 condition, circumstance or construction defect which resulted in property damage prior to the  
 25 inception date of the Ironshore-Cedco Policy.

26 INSURED: LAIRD WHIPPLE

27 Cohen Action

28

8. Any alleged property damage that could have resulted from Laird Whipple Concrete Construction, Inc.'s or Laird Whipple Concrete Construction's work was already in the process of taking place prior to the inception of the Ironshore-Laird Whipple Policy.

9. The property damage that allegedly first existed prior to the inception date of the Ironshore-Cedco Policy was of the same general nature or type as a condition, circumstance or construction defect which resulted in any property damage alleged.

10. Ironshore did not insure Laird Whipple Concrete Construction, Inc.

11. The complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

#### Colford Action

12. Ironshore did not insure Raymond dba.

13. The complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

#### Stacy Action

14. Ironshore did not insure Raymond dba.

15. Ironshore did not insure Laird Whipple Concrete Construction, Inc.

16. The complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

#### Wright Action.

17. The complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

#### INSURED: PR CONSTRUCTION

#### Epstein Action

18. The complaint in the underlying action alleges that defendants caused



1 property damage by tortiously failing to exercise reasonable care in the construction of the subject  
2 homes.

3 INSURED: STEWART & SUNDELL

4 Aurora Glen Action

5 19. The complaint in the underlying action alleges that defendants caused  
6 property damage by tortiously failing to exercise reasonable care in the construction of the subject  
7 homes.

8 20. Any alleged property damage that could have resulted Stewart & Sundell's  
9 work was already in the process of taking place prior to the inception of the policy.

10 21. Any alleged property damage was of the same general nature or type as a  
11 condition, circumstance or construction defect which resulted in property damage prior to the  
12 inception date of the Ironshore-Stewart & Sundell Policy.

13 Boyer Action

14 22. The First Amended Complaint in the underlying action alleges that  
15 defendants caused property damage by tortiously failing to exercise reasonable care in the  
16 construction of the subject homes.

17 23. Any alleged property damage that could have resulted Stewart & Sundell's  
18 work was already in the process of taking place prior to the inception of the Ironshore-Stewart &  
19 Sundell Policy

20 24. Any alleged property damage was of the same general nature or type as a  
21 condition, circumstance or construction defect which resulted in property damage prior to the  
22 inception date of the Ironshore-Stewart & Sundell Policy.

23 Mystic Bay Action

24 25. Any alleged property damage that could have resulted Stewart & Sundell's  
25 work was already in the process of taking place prior to the inception of the Ironshore-Stewart &  
26 Sundell Policy.

26. Any alleged property damage was of the same general nature or type as a condition, circumstance or construction defect which resulted in property damage prior to the inception date of the Ironshore-Stewart & Sundell Policy.

Torrey Pines Action

27. Any alleged property damage that could have resulted Stewart & Sundell's work was already in the process of taking place prior to the inception of the Ironshore-Stewart & Sundell Policy.

28. Alleged property damage was of the same general nature or type as a condition, circumstance or construction defect which resulted in property damage prior to the inception date of the Ironshore-Stewart & Sundell Policy.

INSURED: SUNWORLD

Evers Action

29. The First Amended Complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

INSURED: UNIVERSAL FRAMING

Larkin Action

30. The complaint in the underlying action alleges that defendants caused property damage by tortiously failing to exercise reasonable care in the construction of the subject homes.

VI.

The following are the issues of law to be tried and determined upon trial.

Agreed Issues of Law

1. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty defend Cedco in Bagley.

2. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty defend Cedco in Blasco.

3. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty

1 defend Cedco in Ishihama.

2 4. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
3 defend Laird Whipple in Cohen.

4 5. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
5 defend Laird Whipple in Colford.

6 6. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
7 defend Laird Whipple in Stacy.

8 7. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
9 defend Laird Whipple in Wright.

10 8. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
11 defend PR Construction in Epstein.

12 9. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
13 defend Stewart & Sundell in Aurora Glen.

14 10. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
15 defend Stewart & Sundell in Aurora Glen.

16 11. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
17 defend Stewart & Sundell in Boyer.

18 12. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
19 defend Stewart & Sundell in Mystic Bay.

20 13. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
21 defend Stewart & Sundell in Wright.

22 14. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
23 defend Sunworld in Evers.

24 15. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
25 defend Universal in Larkin.

26 16. Per this Court's Order [Dkt. No. 72], this Court has held that Ironshore owed a duty  
27 defend Universal in Macias.

28

1           17.     This Court ruled: "Though Defendant Ironshore is correct that some of these defects  
2 may have existed prior to the coverage period, the text of this document [the Chapter 40 Notice]  
3 certainly does not preclude the possibility that these alleged defects first arose during the coverage  
4 period and were sudden and accidental. Thus, the Court finds that the notice of defects related to  
5 the Bagley action triggered Defendant Ironshore's duty to defend."

6           18.     This Court ruled that, because the complaint in the *Blasco* action "included  
7 allegations of property damage which were vague as to their temporal implications and could have  
8 included sudden and accidental damage," Ironshore had a duty to defend that claim.

9           19.     This Court ruled that "the allegations in the *Ishihama* complaint lack any specific  
10 reference to when the alleged property damage arose, or whether this damage was sudden and  
11 accidental, and thus found that "this complaint gave rise to a possibility of coverage under the  
12 Ironshore policy and triggered Defendant Ironshore's duty to defend."

13           20.     This Court ruled that, because the complaint in the *Cohen* action "included  
14 allegations of property damage which were vague as to their temporal implications and could have  
15 included sudden and accidental damage," Ironshore had a duty to defend that claim.

16           21.     This Court ruled that, because the complaint in the *Colford* action "included  
17 allegations of property damage which were vague as to their temporal implications and could have  
18 included sudden and accidental damage," Ironshore had a duty to defend that claim.

19           22.     This Court ruled that, because the complaint in the *Stacy* action "included allegations  
20 of property damage which were vague as to their temporal implications and could have included  
21 sudden and accidental damage," Ironshore had a duty to defend that claim.

22           23.     This Court ruled that "this claim is vague as to when the property damage began, and  
23 does not imply that the damage was not sudden and accidental", and "[a]ccordingly, the Court finds  
24 that the allegations in the *Wright* action gave rise to a possibility of coverage under the Ironshore  
25 policy, and therefore Defendant Ironshore had a duty to defend.

26           24.     This Court ruled that, because the complaint in the *Epstein* action "included  
27 allegations of property damage which were vague as to their temporal implications and could have  
28 included sudden and accidental damage," Ironshore had a duty to defend that claim.

1           25.     The Court ruled that "because the [*Epstein*] complaint is devoid of any allegations  
2 regarding the specific time the property damage arose or any indication that the damage was not  
3 sudden and accidental, it triggered Defendant Ironshore's duty to defend."

4           26.     The Court ruled that the allegations of the *Boyer* complaint do not specify when the  
5 alleged property damage first arose, and do not indicate that the damage was not sudden and  
6 accidental; thus, the Court found that the allegations gave rise to the possibility of coverage under  
7 the Ironshore policy and triggered Ironshore's duty to defend.

8           27.     The Court ruled that "Defendant Ironshore incorrectly applied the Continuous or  
9 Progressive Injury or Damage Exclusion to this case, because the allegations in the complaint do  
10 not specify when the alleged property damage arose or indicate that the damage was not sudden and  
11 accidental. Accordingly, the Court finds that Defendant Ironshore had a duty to defend its insured  
12 in the *Mystic Bay* action."

13           28.     The Court ruled that the "allegations [of the complaint in *Torrey Pines*] do not  
14 specify when the alleged property damage at issue began, and no reasonable inference can be drawn  
15 as to whether the alleged damages were sudden and accidental"; thus, "the Court finds that the  
16 complaint in the *Torrey Pines* action gave rise to a possibility of coverage under the Ironshore  
17 policy, and triggered Defendant Ironshore's duty to defend."

18           29.     This Court ruled that, because the complaint in the *Evers* action "included allegations  
19 of property damage which were vague as to their temporal implications and could have included  
20 sudden and accidental damage," Ironshore had a duty to defend that claim.

21           30.     The Court ruled that "the *Larkin* complaint did not specify when the alleged property  
22 damage at issue began vis-à-vis the Ironshore policy period, nor did it negate a possible inference  
23 that the alleged damage was sudden and accidental. Accordingly, the Court finds that the *Larkin*  
24 complaint gave rise to a possibility of coverage, and triggered Defendant Ironshore's duty to  
25 defend."

26           31.     The Court ruled that, because the complaint in the *Macias* action "included  
27 allegations of property damage which were vague as to their temporal implications and could have  
28 included sudden and accidental damage," Ironshore had a duty to defend that claim.

1           Plaintiffs' Contested Issues of Law

2           a.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
3 coverage for Cedco in Bagley, what amount Ironshore must reimburse Plaintiffs for sums incurred  
4 on behalf of it.

5           b.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
6 coverage for Cedco in Blasco, what amount Ironshore must reimburse Plaintiffs for sums incurred  
7 on behalf of it.

8           c.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
9 coverage for Cedco in Ishihama, what amount Ironshore must reimburse Plaintiffs for sums  
10 incurred on behalf of it.

11          d.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
12 coverage for Laird Whipple in Cohen, what amount Ironshore must reimburse Plaintiffs for sums  
13 incurred on behalf of it.

14          e.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
15 coverage for Laird Whipple in Colford, what amount Ironshore must reimburse Plaintiffs for sums  
16 incurred on behalf of it.

17          f.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
18 coverage for Laird Whipple in Stacy, what amount Ironshore must reimburse Plaintiffs for sums  
19 incurred on behalf of it.

20          g.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
21 coverage for Laird Whipple in Wright, what amount Ironshore must reimburse Plaintiffs for sums  
22 incurred on behalf of it.

23          h.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
24 coverage for PR Construction in Epstein, what amount Ironshore must reimburse Plaintiffs for sums  
25 incurred on behalf of it.

26          i.       Assuming Ironshore cannot meet its burden of conclusively proving the absence of  
27 coverage for Stewart & Sundell in Aurora Glen, what amount Ironshore must reimburse Plaintiffs  
28 for sums incurred on behalf of it.

j. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Stewart & Sundell in Aurora Glen, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

k. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Stewart & Sundell in Boyer, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

l. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Stewart & Sundell in Mystic Bay, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

m. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Stewart & Sundell in Wright, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

n. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Sunworld in Evers, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

o. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Universal in Larkin, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

p. Assuming Ironshore cannot meet its burden of conclusively proving the absence of coverage for Universal in Macias, what amount Ironshore must reimburse Plaintiffs for sums incurred on behalf of it.

#### Ironshore's Contested Issues of Law

1. Whether the *Bagley* claim is actually covered by the Ironshore-Cedco policy.
1. Whether the *Blasco* claim is actually covered by the Ironshore-Cedco policy.
3. Whether the *Ishihama* claim is actually covered by the Ironshore-Cedco policy.
4. Whether the *Cohen* claim is actually covered by the Ironshore-Laird Whipple policy.
5. Whether the *Colford* claim is actually covered by the Ironshore-Laird Whipple policy.

- 1           6.       Whether the *Stacy* claim is actually covered by the Ironshore-Laird Whipple policy.
- 2           7.       Whether the *Wright* claim is actually covered by the Ironshore-Laird Whipple policy.
- 3           8.       Whether the *Epstein* claim is actually covered by the Ironshore-PR Construction
- 4 policy.
- 5           9.       Whether the *Aurora Glen* claim is actually covered by the Ironshore-Stewart &
- 6 Sundell policy.
- 7           10.      Whether the *Boyer* claim is actually covered by the Ironshore-Stewart & Sundell
- 8 policy.
- 9           11.      Whether the *Mystic Bay* claim is actually covered by the Ironshore-Stewart &
- 10 Sundell policy.
- 11          12.      Whether the *Torrey Pines* claim is actually covered by the Ironshore-Stewart &
- 12 Sundell policy.
- 13          13.      Whether the *Evers* claim is actually covered by the Ironshore-Sunworld policy.
- 14          14.      Whether the *Larkin* claim is actually covered by the Ironshore-Universal Framing
- 15 policy.
- 16          15.      Whether the *Macias* claim is actually covered by the Ironshore-Universal Framing
- 17 policy.
- 18          16.      Any contested issues of fact that the court deems issues of law.
- 19          17.      Whether Plaintiffs bear the burden of proving the "sudden and accidental" exception
- 20 to paragraph 1 of the CP Exclusion.
- 21          18.      Whether Ironshore's policy deductibles limit or eliminate Plaintiffs' recovery, if any,
- 22 from Ironshore for one or more claims at issue.
- 23          19.      If Plaintiffs are entitled to recover from Ironshore expenses Plaintiffs allegedly
- 24 incurred in the underlying actions, the formula for allocating those expenses, such as per insurer,
- 25 time on the risk, comparative total policy limits, and other equitable factors.
- 26          20.      If Plaintiffs are entitled to recover from Ironshore the settlement amounts Plaintiffs
- 27 allegedly incurred in the underlying actions, the formula for allocating those amounts, such as per
- 28 insurer, time on the risk, comparative total policy limits, and other equitable factors.



## VII.

(a) The following exhibits are stipulated into evidence in this case and may be so marked by the Clerk:

(1) Plaintiffs' exhibits:

Plaintiffs' Exhibits are set forth in Exhibit A (attached hereto). As to these exhibits, Defendant stipulates that the following shall be introduced into evidence: 1, 2, 3 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 382-411, 442, 443. As to all other exhibits, Defendant reserves all rights as to all objections.

(2) Defendant's exhibits:

Defendant's Exhibits are set forth in Exhibit B (attached hereto). As to these exhibits, Plaintiffs stipulate that the following shall be introduced into evidence: 5003, 5004, 5005, 5006, 5012, 5021, 5022, 5030, 5054, 5055, 5057, 5058, 5059, 5060, 5061, 5063, 5064, 5070, 5076, 5079, 5084, 5088, 5089, 5097, 5105, 5107, 5108, 5123, 5124, 5125, 5126, 5127, 5130, 5137, 5138, 5139, 5140, 5141, 5142, 5143, 5144, 5145, 5154, 5155, 5157, 5159, 5171, 5184, 5185, 5193, 5194, 5205, 5207, 5208, 5209, 5210, 5211, 5218, 5228, 5229, 5230, 5231, 5232, 5233, 5234, 5235, 5243, 5261 and 5262.

Additional Exhibits to be added as stipulated as introduced into evidence: 5001, 5002, 5035, 5053, 5066, 5080, 5082, 5091, 5092, 5093, 5094, 5109, 5114, 5146, 5151, 5156, 5162, 5166,, 5172, 5176, 5180, 5181, 5182, 5197, 5199, 5200, 5212, 5236, 5237, 5238, 5239, 5250, 5257.

Additional Exhibits to be added as stipulated to be business records of the Plaintiffs pursuant to FRE 803(6); Plaintiffs reserve all other objections: 5007, 5015, , 5025, 5026, 5027, , 5031, 5032, 5036, 5039, 5065, 5067, 5071, 5072, 5081, 5085, 5086, , 5090, 5095, 5100, 5106, 5115, 5116, 5131, 5132, 5147, 5148, 5149, 5163, 5164, 5183, 5189, 5190, 5201, 5202, 5219, 5220, 5240, 5247, 5248, 5265, 5266, 5267.

Additional Exhibits to be added as stipulated to be business records of the insured pursuant to FRE 803(6); Plaintiffs reserve all other objections: 5017, 5018, 5019, 5020, 5034, 5041, 5042, 5043,

5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5074, 5102, 5103, 5110, 5118, 5119, 5120, 5121, 5122, 5158, 5169, 5174, 5175, 5179, 5192, 5198, 5206, 5215, 5216, 5222, 5223, 5224, 5225, 5226, 5227, 5241, 5246, 5251, 5252, 5253, 5263, 5264.

As to all other exhibits, Plaintiffs reserve all rights as to all objections.

(b) As to the following additional exhibits the parties have reached the stipulations stated:

(1) Plaintiffs' exhibits:

None.

(2) Defendant's exhibits:

None.

(c) As to the following exhibits, the party against whom the same will be offered objects to their admission upon the grounds stated:

(1) Plaintiffs' objections to defendant's exhibits:

See Exhibit C.

(2) Defendant's objections to plaintiffs' exhibits:

See Exhibit D.

(d) Depositions:

(1) Plaintiffs will offer the following depositions:

a. Deposition of Mary Frances Nolan taken on December 18, 2014. As to this deposition, Plaintiffs may offer the following excerpts as evidence at trial: 18:10-19, 46:22-50:5, 52:18-55:21, 64:2-6, 76:22-79:21, 90:8-102:25, 103:1-9, 116:2-25, 117:1-118:10, 120:6-123:23, 128:11-130:12, 134:22-25, 135:1-137:25, 154:1-15, 154:18-155:1, 169:11-170:5, 170:7-17, 173:13-174:3, 174:23-175:8, 176:10-177:5, 178:2-23, 185:23-186:19, 190:15-191:17, 194:9-19, 193:1-24, 195:2-19, 195:21-197:24, 202:20-204:16, 204:24-205:11, exhibit 2, exhibit 4

(2) Defendant will offer the following depositions:

Douglas Westoff – testimony to be offered against plaintiff American Guarantee and Liability Insurance Company

20:5-8

1 37:22-38:13  
2 41:8-20  
3 44:3-11  
4 Rachael Rutherford Crammer - testimony to be offered against plaintiffs Assurance  
5 Company of America and Northern Insurance Company of New York  
6 19:14-19  
7 36:18-37:1-2  
8 48:12-49:1  
9 70:16-71:9  
10 78:3-7  
11 86:19-87:7  
12 87:18-25  
13 91:23-92:11  
14 102:13-20  
15 104:13-22  
16 108:15-24  
17 111:4-14  
18 113:2-12  
19 120:11-18  
20 121:14-23  
21 130:4-131:1  
22 134:16-22  
23 135:9-19  
24 136:20-137:5  
25 137:8-17  
26 141:2-9  
27 142:8-18  
28 143:9-14

1	157:12-19
2	161:5-11
3	162:21-163:8
4	164:9-18
5	165:6-14
6	171:10-20
7	172:3-9
8	172:10-17
9	172:24-173:8
10	173:17-174:3
11	176:17-177:5
12	179:3-11
13	181:17-24
14	183:24-184:4
15	185:25-186:4
16	Elizabeth del Rosario - testimony to be offered against plaintiff Northern Insurance
17	Company of New York
18	23:2-18
19	26:6-21
20	34:3-15
21	40:4-10
22	42:10-22
23	43:2-13
24	43:14-23
25	44:7-15
26	47:23-48:7
27	50:14-25
28	59:14-60:7

1 64:10-18

2 Patricia Gier - testimony to be offered against plaintiff Assurance Company of America

3 11:11-15

4 13:21-14:8

5 24:19-25:14

6 Brett Richardt - testimony to be offered against plaintiff Assurance Company of America  
7 and Northern Insurance Company of New York

8 18:3-14

9 23:2-14

10 26:13-27:22

11 30:7-18

12 34:13-25:6

13 36:25-37:12

14 41:4-14

15 42:22-43:11

16 44:22-47:16

17 48:21-51:4

18 52:2-16

19 (e) Objections to Deposition Excerpts:

20 (1) Ironshore objects to plaintiffs' deposition excerpts, and in the event the  
21 testimony is allowed, and where appropriate, counterdesignates additional excerpts, as follows:

22 Plaintiffs' Designated  
23 Excerpts of Mary Frances  
24 Nolan Deposition

25 18:10-19

26 46:22-50:5

27 46:22-47:20: Incomplete hypothetical; vague and ambiguous;  
28 overbroad. 47:21-48:4: Incomplete hypothetical; foundation;  
calls for speculation. 48:5-24: Incomplete hypothetical;  
foundation; calls for speculation; vague and ambiguous;  
overbroad. 49:1-6: Incomplete hypothetical; foundation; calls

1		for speculation. 49:7-50:5: Incomplete hypothetical; foundation; calls for speculation.
2		Ironshore Counter-designates p. 50:6-15.
3	52:18-55:21	52:18-24: Overbroad. 53:1-13: Overbroad. 53:14-19: Foundation; calls for speculation. 53:20-55:4: Opinion; legal conclusion. 55:5-21: Foundation; assumes facts; incomplete hypothetical; overbroad; opinion; legal conclusion; calls for speculation.
4		
5		
6		
7		Ironshore Counter-designates pp. 55:21-56:14.
8	116:2-25	116:2-22. Opinion; best evidence; incomplete hypothetical; foundation; irrelevant. 116:22-25: Opinion; legal conclusion; incomplete hypothetical; foundation; assumes facts; irrelevant.
9		
10		
11	128:11-130:12	128:11-14: Foundation; assumes facts. 128:15-130:12: Foundation; assumes facts; opinion; legal conclusion incomplete hypothetical.
12		
13	134:22-25	Excerpt is unintelligible. Best evidence; irrelevant; overbroad; incomplete hypothetical; foundation; opinion; legal conclusion.
14		
15	154:1-15	Best evidence; irrelevant; overbroad; incomplete hypothetical; foundation; opinion; legal conclusion; assumes facts; argumentative.
16		
17		
18	169:11-170:5	Best evidence; irrelevant; overbroad; incomplete hypothetical; foundation; opinion; legal conclusion.
19		
20	174:23-175:8	Best evidence; irrelevant; overbroad; incomplete hypothetical; foundation; opinion; legal conclusion.
21		
22		Ironshore Counter-designates p. 175:9-13.
23	178:2-23	178:2-15: Best evidence; overbroad; incomplete hypothetical; opinion, irrelevant; legal conclusion. 178:16-23: Overbroad; incomplete hypothetical; opinion, legal conclusion irrelevant.
24		
25		Ironshore Counter-designates p. 179:1-180:12.
26	185:23-186:19	Best evidence; incomplete hypothetical; opinion; legal conclusion; irrelevant.
27		
28		Ironshore Counter-designates pp. 186:20-187:17.

1	193:1-24	Best evidence; incomplete hypothetical; opinion, legal
2		conclusion; irrelevant.
3	195:2-19	Best evidence; incomplete hypothetical; opinion; legal
4		conclusion; irrelevant.
5	Exhibit 2	
6	Exhibit 4	
7	64:2-6	Outside the scope of the deposition notice, foundation.
8	76:22-79:21	Outside the scope of the deposition notice, foundation.
9	90:8-102:25	Outside the scope of the deposition notice, foundation.
10	103:1-9	Outside the scope of the deposition notice, foundation.
11	117:1-118:10	Outside the scope of the deposition notice, foundation.
12	120:6-123:23	Outside the scope of the deposition notice, foundation.
13	135:1-137:25	Outside the scope of the deposition notice, foundation.
14	154:18-155:1	Outside the scope of the deposition notice, foundation.
15	170:7-17	Outside the scope of the deposition notice, foundation.
	173:13-174:3	Outside the scope of the deposition notice, foundation.
	176:10-177:5	Outside the scope of the deposition notice, foundation.
	190:15-191:17	Outside the scope of the deposition notice, foundation.
	194:9-19	Outside the scope of the deposition notice, foundation.
	195:21-197:24	Outside the scope of the deposition notice, foundation.
	202:20-204:16	Outside the scope of the deposition notice, foundation.
	204:24-205:11	Outside the scope of the deposition notice, foundation.

(2) Plaintiffs object to defendant's depositions as follows:

Crammer, 36:18-37:1-2. Legal conclusion; improper lay testimony.

Crammer, 130:4-131:1. Legal conclusion; improper lay testimony.

Gier, 24:19-25:14. Legal conclusion; improper lay testimony.

Richardt, 34:13-35:6. Legal conclusion; improper lay testimony.

Richardt, 48:21-51:4. Legal conclusion; improper lay testimony.

Richardt, 52:2-16. Legal conclusion; improper lay testimony.

del Rosario, 59:14-60:7. Legal conclusion; improper lay testimony.

del Rosario, 64:10-18. Legal conclusion; improper lay testimony.

Westoff, 37:22-38:13. Legal conclusion; improper lay testimony.

Westoff, 41:8-20. Legal conclusion; improper lay testimony.

#### VIII.

The following witnesses may be called by the parties upon trial:

None. The parties propose to submit the case on stipulated facts, documentary evidence, and deposition testimony and the following agreed upon testimony:

A. Witness - Tom Hopson. This witness testifies as follows:

1. I am a member of Universal Framing, LLC, a Nevada limited liability company.  
2. On behalf of Universal Framing, LLC, I purchased insurance policies from Ironshore intending to cover the liability of Universal Framing, LLC. Premium for these policies was paid by Universal Framing, LLC. Copies of these policies have been marked in this matter as Exhibits 28 and 29.

3. The Ironshore policies (Exs. 28, 29) list the insured as "Universal Framing, Inc." No such entity exists. Given this, a literal interpretation of the Ironshore policies issued to "Universal Framing, Inc." would result in Ironshore covering no risks for a non-existent entity that performs no work and faces no liability.

4. The reference to Ironshore Framing, Inc. in the policies Ironshore issues is a typographical error and a mistake. It was and is my intent for the policies to extend coverage for Universal Framing, LLC, and not Universal Framing, Inc., the later being a non-existent entity.

B. Ironshore. Ironshore will testify that it first received tenders from the Plaintiffs on or about the dates indicated in the tender letters, as follows:

1. The Bagley action was tendered to Ironshore by letter dated December 30, 2010.
2. The Blasco action was tendered to Ironshore by letter dated August 25, 2011.
3. The Ishihama action was tendered to Ironshore by letter dated June 7, 2010.
4. The Cohen action was tendered to Ironshore by letter dated March 3, 2010.
5. The Colford action was tendered to Ironshore by letter dated December 15, 2010.
6. The Stacy action was tendered to Ironshore by letter dated February 11, 2011.
7. The Wright action was tendered to Ironshore by letter dated March 7, 2011.
8. The Epstein action was tendered to Ironshore by letter dated June 3, 2011.
9. The Aurora Glen action was tendered to Ironshore by letter dated July 27, 2009.
10. The Boyer action was tendered to Ironshore by letter dated September 14, 2010.
11. The Mystic Bay action was tendered to Ironshore by letter dated January 6, 2010.



12. The Torrey Pines action was tendered to Ironshore by letter dated October 15, 2010.

13. The Evers action was tendered to Ironshore by letter dated February 2, 2012.

14. The Larkin action was tendered to Ironshore by letter dated August 6, 2012.

15. The Macias action was tendered to Ironshore by letter dated November 16, 2010.

16. Ironshore received the following exhibits from the sender, as indicated on the face of the exhibit, in connection with the submission of the claim(s) indicated on the face of the exhibit:  
535, 553, 566, 580, 582, 591, 592, 593, 594, 609, 614, 646, 651, 656, 662, 666, 667, 672, 676, 680, 681, 682, 697, 699, 700, 712, 736, 737, 738, 739, 750, 757.

#### IX.

This parties stipulate that the case is to be submitted on briefing under the stipulations in this Pre-Trial Order and on the following schedule:

Initial Trial Briefs Due: January 9, 2017

Rebuttal Trial Briefs Due: February 8, 2017

Oral Argument (Parties Request 1 hour each) To be set by the Court

The parties further stipulate that the stipulations as to agreed facts, agreed legal issues, admissibility of evidence, and stipulated testimony shall remain in effect without regard to whether the Court approves the parties' proposal to submit this matter on briefing, and without regard to the scheduling of said briefing.

#### X.

Not applicable.

APPROVED AS TO FORM AND CONTENT:

MORALES FIERRO & REEVES

MORISON & PROUGH, LLP

By: /s/ William C. Reeves  
William C. Reeves  
Attorneys for Plaintiffs

By: /s/ William C. Morison  
William C. Morison  
Attorneys for Defendant  
IRONSHORE SPECIALTY  
INSURANCE COMPANY

ACTION BY THE COURT

This case is to be submitted on briefing under the following schedule:

Initial Trial Briefs Due: January 30, 2017

Rebuttal Trial Briefs Due: March 6, 2017

Oral Argument (Parties Request 1 hour each) March 24, 2017 at 9:00 a.m. in 7C

This pretrial order has been approved by the parties to this action as evidenced by their signatures or the signatures of their attorneys hereon, and the order is hereby entered and will govern the trial of this case. This order may not be amended except by court order and based upon the parties' agreement or to prevent manifest injustice.

Dated: January 5, 2017

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

1 William C. Reeves  
 State Bar No. 8235  
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5 Attorneys for Plaintiffs

6  
 7  
 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF NEVADA

10 ASSURANCE CO. OF AMERICA, et al.	)	Case No.: 2:13-cv-02191-GMN-CWH
	)	
11 Plaintiffs,	)	ORDER RE: FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
12 vs.	)	
	)	
13 IRONSHORE SPECIALTY INS. CO.,	)	
	)	
14 Defendant.	)	
	)	

15  
 16 This Court, having presided over a trial on the briefs in this matter and considering the  
 17 evidence and argument of the parties, finds as follows:

18 Findings of Fact

19 Plaintiffs Assurance Company of America and Northern Insurance Company of New York  
 20 (collectively "Zurich") are insurance companies with a common corporate parent. Dkt. No. 26,  
 21 1:20-26. Defendant Ironshore Specialty Insurance Company ("Ironshore") is also an insurance  
 22 company. Dkt. No. 6, 1:28-2:3.<sup>1</sup> In this case, Zurich seeks contribution from Ironshore as to sums  
 23 the former incurred in connection with the defense and settlement of underlying lawsuits.

24 I. Policies

25 At issue in this case are lawsuits in which the following common insureds were named as

26  
 27 <sup>1</sup> Plaintiff American Guarantee and Liability Company ("American Guarantee") previously accepted an Offer of  
 28 Judgment made by Ironshore. Dkt. No. 77. By virtue of this acceptance, a Consent Judgment was subsequently entered  
 in favor of American Guarantee such that it is no longer a party to this action. Dkt. No. 79.

1 parties:

- 2 • Cedco, Inc. ("Cedco")
- 3 • Laird Whipple Concrete Construction, Inc. ("Laird Whipple")
- 4 • PR Construction Corp. ("PR Construction")
- 5 • Stewart & Sundell Concrete, Inc. ("Stewart & Sundell")
- 6 • Sunworld Landscape and Construction, LLC ("Sunworld")
- 7 • Universal Framing, LLC ("Universal Framing")

8 Zurich issued the following general liability insurance policies to Cedco:

- 9 • Policy No.: CON50022947 (effective 04/12/01-04/12/02); and
- 10 • Policy No.: CON50022947 (effective 04/12/02-04/12/03).

11 Exs. 1-2.

12 Zurich issued the following general liability insurance policies to Laird Whipple:

- 13 • Policy No.: SCP38949211 (effective 10/12/00-10/12/01).

14 Ex. 624.

15 Zurich issued the following general liability insurance policies to PR Construction:

- 16 • Policy No.: CON 33083339 (effective 08/01/99-08/01/00);
- 17 • Policy No.: CON 33083339 (effective 08/01/00-08/01/01); and
- 18 • Policy No.: CON 33083339 (effective 08/01/01-08/01/02).

19 Exs. 5-7.

20 Zurich issued the following general liability policies to Stewart & Sundell:

- 21 • Policy No.: 1849622 (effective 03/01/94-03/01/95)
- 22 • Policy No.: EPA24788847 (effective 03/01/95-03/01/96);
- 23 • Policy No.: EPA28258722 (effective 03/01/96-03/01/97);
- 24 • Policy No.: EPA30907464 (effective 03/01/97-03/01/98);
- 25 • Policy No.: EPA32604960 (effective 03/01/98-03/01/99);
- 26 • Policy No.: CON32604960 (effective 03/01/99-03/01/00);
- 27 • Policy No.: CON32604960 (effective 03/01/00-03/01/01); and
- 28 • Policy No.: CON32604960 (effective 03/01/01-03/01/02).

1 Exs. 11-18.

2 Zurich issued the following general liability policies to Sunworld:

- 3 • Policy No.: CON98713598 (effective 05/16/01-05/16/02).

4 Ex 21.

5 Zurich issued the following commercial general liability policies to Universal Framing:

- 6 • Policy No. SCP39574349 (effective 01/07/03-01/07/04);
- 7 • Policy No. SCP39574349 (effective 01/07/04-01/07/05);
- 8 • Policy No. SCP39574349 (effective 01/07/05-01/07/06); and
- 9 • Policy No. SCP39574349 (effective 01/07/06-01/07/07).

10 Exs 24-27.

11 Ironshore issued Cedco the following general liability policies:

- 12 • Policy No.: 018ER0905001 (effective 06/01/09-06/01/10); and
- 13 • Policy No.: 00194200 (effective 04/01/10-04/01/11).

14 Exs. 4, 505.

15 Ironshore issued Laird Whipple the following general liability policies:

- 16 • Policy No.: 017BW0905001 (effective 04/15/09-04/15/10); and
- 17 • Policy No.: 000242101 (effective 04/15/10-04/15/11).

18 Exs. 8-9.

19 Ironshore issued PR Construction the following general liability policy:

- 20 • Policy No.: 000115801 (effective 01/31/10-01/31/11).

21 Ex. 10.

22 Ironshore issued Stewart & Sundell the following commercial general liability policy:

- 23 • Policy No.: 012A80905001 (effective 03/01/09-03/01/10);
- 24 • Policy No.: 000167401 (effective 03/01/10-03/01/11).

25 Exs. 19-20.

26 Ironshore issued Sunworld the following policy:

- 27 • Policy No.: 00GN10905001 (effective 06/04/09-06/04/10).

28 Ex. 22.

1 Finally, Ironshore issued Universal Framing the following policy:

- 2 • Policy No.: 00T960905001 (effective 10/13/09-10/13/10).

3 Exs. 29.<sup>2</sup>

4 The policies Zurich and Ironshore issued include Commercial General Liability Coverage  
5 Forms that generally provide as follows:

6 We will pay those sums that the insured becomes legally obligated to  
7 pay as damages because of ... "property damage" to which this  
8 insurance applies. We will have the right duty to defend the insured  
9 against any 'suit' seeking those damages. However, we will have no  
10 duty to defend the insured against any "suit" seeking damages for ...  
11 'property damage' to which this insurance does not apply...

12 b. This insurance applies to ... "property damage" only if:

13 (1) The ... "property damage" is caused by an "occurrence" ... [and]

14 (2) The ... "property damage" occurs during the policy period.

15 ...

16 "Occurrence" means an accident, including continuous or repeated  
17 exposure to substantially the same general harmful conditions.

18 ...

19 "Property damage" means:

20 a. Physical injury to tangible property, including all resulting loss of  
21 use of that property.

22 The policies Zurich and Ironshore issued also provide as follows:

23 4. Other Insurance.

24 If other valid and collectible insurance is available to the insured for a  
25 loss we cover under Coverages A or B of this Coverage Part, our  
26 obligations are limited as follows:

27 ...

28 c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we  
will follow this method also. Under this approach each insurer

<sup>2</sup> Ironshore issued also issued Policy No. 00T960805001 (effective 10/13/08-10/13/09). Dkt. No. 28. Unlike the later policy, the 2008-2009 policy includes a Designated Work endorsement barring coverage for work completed prior to October 13, 2008. Dkt. No. 28, p. 50. Given the timing of the work at issue, this endorsement applies to bar coverage.

1 contributes equal amounts until it has paid its applicable limit  
2 of insurance or none of the loss remains, whichever comes first.

3 Meanwhile, the policies only Ironshore issued each include Continuous or Progressive  
4 Injury Exclusion endorsements ("CP Exclusion") which provide in relevant part as follows:

5 This insurance does not apply to any ... "property damage":

6 1. which first existed, or is alleged to have first existed, prior to the  
7 inception of this policy. "Property damage" from "your work" ...  
8 performed prior to policy inception will be deemed to have first  
9 existed prior to the policy inception, unless such "property damage" is  
10 sudden and accidental and takes place within the policy period; or

11 2. which was, or is alleged to have been, in the process of taking place  
12 prior to the inception date of this policy, even if such . . . "property  
13 damage" continued during this policy period; or

14 3. which is, or is alleged to be, of the same general nature or type as a  
15 condition, circumstance or construction defect which resulted in . . .  
16 "property damage" prior to the inception date of this policy.

## 17 II. Underlying Matters

18 Cedco was named as a party to the following underlying matters:

- 19 • Bagley v. All Drywall and Paint, Clark County Case No. A620609 ("Bagley");
- 20 • Blasco v. Rhodes Design, Clark County Case No. A578060 ("Blasco"); and
- 21 • Ishihama v. Terravita Home Construction Co., Clark County Case No. A632302  
22 ("Ishihama").

23 Ex Nos. 47-52.

24 Laird Whipple was named as a party to the following underlying matters:

- 25 • Stacy v. American West Homes, Inc., Clark County Case No. A575959 ("Stacy");
- 26 • Cohen v. Nigro Desert Bloom, LLC, Clark County Case No. A591492 ("Cohen");
- 27 • Wright v. Carina Corp., Clark County Case No. A602989 ("Wright"); and
- 28 • Colford v. American West Homes, Inc., Clark County Case No. A593923  
("Colford").

Exs. 53-57, 70-71, 74-75.

PR Construction was named as a party to the following underlying matter:

- Epstein Family Trust v. Westgate Properties, Clark County Case No. A624664

1 ("Epstein").

2 Ex. 58-59.

3 Stewart & Sundell was named as a party to the following underlying matters:

- 4 • Aurora Glen HOA v. Pinnacle-Aurora II, LP, Clark County Case No. A605463
- 5 ("Aurora");
- 6 • Boyer v. PN II, Clark County Case No. A603841 ("Boyer");
- 7 • Mystic Bay HOA v. Richmond Amer. Homes, Clark County Case No. A611595
- 8 ("Mystic Bay"); and
- 9 • Torrey Pines HOA v. U.S. Home Corp., Clark County Case No. A571846 ("Torrey
- 10 Pines").

11 Exs. 51-52, 68-69, 72-73, 655, 657.

12 Sunworld was named as a party to the following underlying matter:

- 13 • Evers v. Fairway Pointe, LLC, Clark County Case No. A614799 ("Evers").

14 Ex. 60-61.

15 Finally, Universal Framing was named as party to the following underlying matters:

- 16 • Macias v. DW Arnold, Inc., Washoe County Case No. CV10-02863; and
- 17 • Larkin v. Comfort Residential, Washoe County Case No. CV09-03256.

18 Exs. 64-67.

19 In response to tenders, Ironshore disclaimed coverage in connection with each of the  
20 underlying matters.

21 Zurich agreed to defend the mutual insureds in connection with each of the underlying  
22 matters, incurring a total of \$291,804 based on the following:

23	Aurora	\$15,467
24	Bagley	\$20,181
25	Blasco	\$17,611
26	Boyer	\$6,139
27	Cohen	\$38,258
28	Colford	\$27,746



1	Epstein	\$9,129
2	Evers	\$42,494
3	Ishihama	\$14,222
4	Larkin	\$26,468
5	Macias	\$8,180
6	Mystic Bay	\$23,063
7	Stacy	\$21,705
8	Torrey Pines	\$4,262
9	Wright	\$16,159

10 Exs. 382-411.

11 Additionally, Zurich agreed to contribute toward settlements of the claims asserted against  
 12 the insureds, reached in connection with each the underlying matters, incurring \$862,890 based on  
 13 the following contributions:

14	Aurora	\$22,222
15	Bagley	\$4,256
16	Blasco	\$183,000
17	Boyer	\$0 (waiver of costs)
18	Cohen	\$40,000
19	Colford	\$100,000
20	Epstein	\$200
21	Evers	\$9,000
22	Ishihama	\$4,000
23	Larkin	\$50,000
24	Macias	\$225,000
25	Mystic Bay	\$76,000
26	Stacy	\$76,000
27	Torrey Pines	\$17,778
28	Wright	\$55,434

Conclusions of Law

I. This Court Has Already Held That Ironshore Improperly Denied Coverage In Connection With Each Of The Underlying Lawsuits.

On September 30, 2014, this Court granted Plaintiffs' Motion for Partial Summary Judgment, and declared that Defendant Ironshore had a duty to defend its insured, Champion Masonry, in an underlying action styled Garcia v. Centex Homes (the Garcia Action). Dkt. No. 27. With respect to the Garcia Action, Ironshore denied a duty to defend its insured Champion Masonry, asserting that the Continuous or Progressive Injury or Damage exclusion precluded all possible coverage. The Court found that the complaint in the Garcia Action alleged damages potentially falling within the scope of the Ironshore Policy insuring agreement. Dkt. No. 27. Further, the complaint in Garcia was "vague as to the temporal implications of the alleged damages, and therefore, it is not clear on the face of the Garcia Complaint whether the alleged damages were or were not sudden and accidental." Dkt. No. 27, 6:10-13. Accordingly, this Court held that the exclusion relied upon by Ironshore did not eliminate the potential for coverage under the Ironshore policy and declared that Ironshore had a duty to defend Champion Masonry in the Garcia Action. Dkt. No. 27, 7, 2-4.

Thereafter, the Parties filed cross-motions for summary judgment, putting at issue Ironshore's duty to defend six (6) other insureds with respect to the balance of underlying actions, all of which Ironshore had declined coverage. In addressing these motions, this Court issued an Order which again found that a potential for coverage existed with respect to each of the insureds in each of the underlying actions and that the potential for coverage with respect to each was not eliminated by the Ironshore progressive damage exclusion. Dkt. No. 72. In so doing, this Court noted as follows:

This case arises from a dispute between co-insurers over coverage for sixteen separate underlying construction defect suits in Nevada state court. . . .

In each of these underlying cases, despite the fact that the insureds had commercial general liability policies with both Plaintiffs and Defendant Ironshore, they were defended and indemnified only by Plaintiffs. The insureds' policies with Defendant Ironshore afforded coverage between varying dates in the years 2009, 2010, and 2011. In

each case, Defendant Ironshore issued a denial letter stating that the insured's work was completed prior to the onset of the policy, and therefore coverage was not triggered pursuant to the policy's "Continuous or Progressive Injury or Damage Exclusion." See, e.g., (Jan. 24, 2011, Cedco Denial Letter p. 2, ECF No. 55-6); (Champion Masonry Denial Letter p. 2, ECF No. 59). In the instant case, Plaintiffs allege that the claims were wrongly denied by Defendant Ironshore, and that Defendant Ironshore had a duty to defend and indemnify the insureds in each of the sixteen underlying actions.

Dkt. No. 72, 1:22-2:25.

Of significance, this Court ruled that Ironshore owed a duty to defend in connection with each of the underlying matters. Dkt. No. 72, 7:5-15:6. This court noted that the allegations in seven of the remaining sixteen underlying actions were identical to those made in the Garcia Action and, as in Garcia, did not specify when the alleged property damage occurred and did not contain sufficient allegations from which to conclude the damage was not sudden and accidental. Having recognized that these allegations triggered Ironshore's duty to defend in Garcia, this Court held that Ironshore also had a duty to defend in the seven identical actions. This Court then analyzed the allegations in each of the remaining nine underlying actions and held that in each, allegations gave rise to the possibility of coverage under the Ironshore policies, a possibility that was not eliminated under the progressive damage exclusion, and that Ironshore's duty to defend was triggered in each.

In the cross motions, Ironshore argued that even if had a duty to defend in the underlying actions, Plaintiffs failed to establish that Ironshore had a duty to indemnify the insureds. This Court held that Ironshore mischaracterized the Plaintiffs' burden, as "where a nonparticipating co-insurer is found to have a duty to defend in an already settled action, the insurer attempting to disclaim coverage bears the burden of proving the applicability of any policy exclusions." Dkt. No. 72, 15:11-13. This Court went onto explain as follows:

Therefore, the question at issue is not whether Plaintiffs have sufficiently shown that Defendant Ironshore had a duty to indemnify, but instead whether Defendant Ironshore has sufficiently shown that it lacked a duty to indemnify in the underlying cases due to the exclusions in its policies. As Defendant Ironshore has not presented evidence demonstrating that the property damage alleged in the sixteen underlying cases fell within its policy exclusions, it has failed to carry this burden, and its Motion for Summary Judgment will accordingly be denied as to Plaintiffs' contribution claims.

1 Dkt. No. 72, 16:7-13.

2 This Court ruled that Ironshore, by improperly failing to defend, bears the burden of proving  
3 that it lacked a duty to indemnify and that “Defendant Ironshore has not presented evidence  
4 demonstrating that the property damage alleged in the sixteen underlying cases fell within its policy  
5 exclusions.” Dkt 72, 16:10-11.

6 In connection with a motion for reconsideration Ironshore filed, this Court reiterated its prior  
7 rulings, stating: “the Court found that Defendant Ironshore had a duty to defend its insureds in the  
8 underlying actions, and that Defendant Ironshore did not provide sufficient evidence for the Court  
9 to conclude that it lacked a duty to indemnify.” Dkt No. 84, 3:3-6. The Court denied the motion for  
10 reconsideration, finding neither clear error nor manifest injustice in the reasoning of its previous  
11 order. The Court expounded on its ruling as follows:

12 Additionally, the Court reiterates that Defendant Ironshore, as a  
13 nonparticipating co-insurer, bears the burden of demonstrating that  
14 the policy exclusion applies to each of the underlying actions. See,  
15 e.g., PMA Capital Ins. Co. v. Am. Safety Indem. Co., 695 F. Supp. 2d  
16 1124, 1125 (E.D. Cal. 2010) (“Once a party claiming coverage shows  
17 a potential for coverage under the coinsurer’s policy, the coinsurer  
18 must conclusively prove with undisputed evidence that no coverage  
19 existed under the policy.”). In the context of this case, this means that  
20 Defendant Ironshore bears the burden of showing that the damage at  
21 issue was not: (1) “sudden and accidental”; (2) “in the process of  
22 taking place prior to the inception date of [the] policy”; or (3) “of the  
23 same general nature or type as a condition, circumstance or  
24 construction defect which resulted in ‘bodily injury’ or ‘property  
25 damage’ prior to the inception date of [the] policy.” (Second  
26 Summary Judgment Order 8:1-14).

27 Dkt. No. 84, 4:22-25.

28 In summary, in prior rulings, this Court has concluded that:

- 29 1. Ironshore owed a duty to defend as to each underlying lawsuit at issue in this case;
- 30 2. Ironshore improperly denied coverage in connection with each of the underlying  
31 matters;
- 32 3. Ironshore, as the nonparticipating co-insurer bears the burden of demonstrating that a  
33 policy exclusion eliminated coverage with respect to the duty to indemnify; and
- 34 4. Ironshore failed to carry in its motions for summary judgment and reconsideration.

35 Dkt. Nos. 27, 72, 84.

1 II. Ironshore Has Not Met Its Burden Of Proving The Absence of Coverage.

2 Under Nevada law, “[a]n insurer . . . bears a duty to defend its insured whenever it ascertains  
3 facts which give rise to a potential for coverage under the policy.” United Nat’l Ins. Co. v. Frontier  
4 Ins. Co., 99 P.3d 1153, 1158 (Nev. 2004). When a duty to defend is shown, nonparticipating  
5 coinsurers are presumptively liable for both the costs of defense and settlement. Safeco Ins. Co. v.  
6 Superior Court, 140 Cal.App.4th 874 (2006), Employers Ins. Co. of Wausau v. Lexington Ins. Co.,  
7 2014 WL 4187842 (C.D. Cal. 2014); Acceptance Ins. Co. v. American Safety Risk Retention  
8 Group, Inc., 2011 WL 3475305 (S.D. Cal. 2011). By virtue of the settlement, the parties forgo their  
9 right to have liability established by a trier of fact as the settlement becomes presumptive evidence  
10 of the insured’s liability and the amount thereof. Advent, Inc. v. National Union Fire Insurance  
11 Company of Pittsburgh, 2016 WL 7100489 (Cal. App. 2016); Westport Ins. Corp. v. Northern  
12 California Relief, 76 F.Supp.3d 869 (N.D. Cal. 2014); Assurance Co. of America v. National Fire &  
13 Marine Ins. Co., 2012 WL 1970017 (D. Nev. 2012). By refusing to participate, therefore, the  
14 recalcitrant coinsurer waives the right to challenge the reasonableness of defense costs and amounts  
15 paid in settlement because any other rule would render meaningless the insured’s right to settle.  
16 Great American Ins. Co. v. Sequoia Ins. Co., 2016 WL 844819 (C.D. Cal. 2016); Federal Ins. Co. v.  
17 National Union Fire Ins. Co. of Pittsburgh, PA, 2013 WL 1209665 (C.D. Cal. 2013).

18 When it is demonstrated that the non-participating insurer owed a duty to defend, the burden  
19 shifts to the non-participating insurer to prove the absence of coverage as the settling insurer need  
20 not prove actual coverage. Valley Forge Ins. Co. v. Zurich American Ins. Co., 2014 WL 4980302  
21 (N.D. Cal. 2014); Axis Surplus Ins. Co. v. Glencoe Ins. Ltd., 204 Cal.App.4th 1214 (2012). The  
22 ~~absence~~ of coverage, therefore, constitutes an affirmative defense for which the non-participating  
23 insurer bears the burden of proof. St. Paul Mercury Ins. Co. v. Mountain West Farm Bureau Mut.  
24 Ins. Co., 210 Cal.App.4th 645 (Cal. 2012); MGA Entertainment, Inc. v. Hartford Ins. Group, 2012  
25 WL 628203 (C.D. Cal. 2012); PMA Capital Ins. Co. v. American Safety Indem. Co., 695 F.Supp.2d  
26 1124 (E.D. Cal. 2010).

27 As the disclaiming insurer that improperly failed to defend, Ironshore bears the burden of  
28 proving the absence of coverage, which it has not done based on the evidence admitted at trial.

1 Ironshore's main argument is that the CP exclusion included in all of its policies bars  
 2 coverage. Ironshore, however, has failed to demonstrate that this exclusion applies to bar actual  
 3 coverage.

4 Prong 1 of the CP Exclusion seeks to deem all damages arising from work completed before  
 5 the inception of any of its policies as occurring outside of its policy period. The exclusion, however,  
 6 does not apply to sudden damages. Ironshore has presented no evidence regarding when any of the  
 7 damages actually occurred, and therefore whether any of the damages occurred suddenly. Absent  
 8 this evidence, Ironshore cannot meet its burden of proving that none of the damages occurred  
 9 suddenly.<sup>3</sup>

10 A separate consideration is the fact that the provision deeming that all damages occur  
 11 outside of its policy period runs counter to the coverage otherwise available under the policy,  
 12 creating an inherent ambiguity. See Saarman Construction, Ltd v. Ironshore Specialty Ins. Co.,  
 13 2016 WL 4411814 (N.D. Cal. 2016). This Court agrees that the deemer sentence included in the CP  
 14 Exclusion runs counter to the purpose and intent of the policy, creating an inherent ambiguity.

15 Prong 2 of the CP Exclusion seeks to bar coverage for damages "which . . . are in the  
 16 process of taking place prior to the inception date of this policy and continue[ ]" while Prong 3  
 17 seeks to bar coverage "which is, or is alleged to be, of the same general nature or type as a  
 18 condition" as to damages which continue. At trial, Ironshore has failed to meet its burden of  
 19 demonstrating that all damages at issue precede the inception of its policy and continue into its  
 20 policy period. As the underlying lawsuits are largely silent as to the timing of the damages, no  
 21 conclusive evidence exists regarding the timing of the damages. Given this, Ironshore cannot meet  
 22 its burden.

23 The balance of arguments Ironshore asserts (i.e., purported known loss rule, "your work"  
 24 exclusion) have been previously addressed by this Court and are unavailing.

25 Based on the foregoing, this Court concludes that Ironshore cannot meet its burden of  
 26 proving the absence of actual coverage such that it is liable for both defense expenses and  
 27 settlement payments Zurich has made.

28 <sup>3</sup> While prong 1 also requires that the damages result from an accident, this requirement already exists by virtue of the  
 insuring agreement and its requirement that damages result from an "occurrence."

1 III. This Court Awards Zurich An Equal Share Of The Sums It Has Incurred.

2 Equitable contribution apportions costs among insurers when several insurers are obligated  
 3 to indemnify or defend the same loss or claim and one insurer has paid more than its share of the  
 4 loss or defended the action without any participation by the others. Travelers Property Casualty  
 5 Company of America v. Amica Mutual Ins. Co., 2016 WL 317657 (D. Nev. 2016), citing Hudson  
 6 Ins. Co. v. Colony Ins. Co., 624 F.3d 1264, 1267 (9th Cir. 2010). Equitable contribution is implied  
 7 by law and designed to prevent the potentially unfair result that would occur if the company to pay  
 8 first were left to cover the entire loss, and therefore exists to ensure that one insurer does not profit  
 9 at the expense of another. Fireman's Fund Ins. Co. v. Maryland Cas. Co., 65 Cal. App. 4th 1279,  
 10 1296 (1998); Howard v. American Nat. Fire Ins. Co., 187 Cal.App.4th 498 (2010).

11 By virtue of the rulings made herein, this Court concludes that Zurich is entitled to  
 12 contribution from Ironshore.

13 There is no fixed rule for allocating costs and expenses among primary insurers covering the  
 14 same loss. Evanston Ins. Co. v. Western Community Ins. Co., 2016 WL 1555706 (D. Nev. 2016);  
 15 North American Specialty Ins. Co. v. National Fire & Marine Ins. Co., 2013 WL 1332205 (D. Nev.  
 16 2013). Thus, allocation is a decision that ultimately rests in the discretion of the Court. See  
 17 Centennial Ins. Co. v. United States Fire Ins. Co., 88 Cal.App.4th 105 (2001); Maryland Casualty  
 18 Co. v. Nationwide Mutual Ins. Co., 81 Cal.App.4th 1082, 1089 (2000).

19 The policies issued by both Zurich and Ironshore each include provisions which explicitly  
 20 state that an equal share approach will be followed if the other available insurance which exists  
 21 permits for contribution by equal shares. Given this, the language of the policies themselves  
 22 support an equal shares allocation, a model other Courts have followed. See Harleysville Mut. Ins.  
 23 Co. v. Hartford Cas. Ins. Co., 90 F.Supp.3d 526 (E.D.N.C. 2015) Travelers Indem. Co. of America  
 24 v. AAA Waterproofing, 2014 WL 201726 (D. Colo. 2014); Residence Mut. Ins. Co. v. Travelers  
 25 Idem. Co. of CT, 26 F.Supp.3d 965 (C.D. Cal. 2104); Carolina Cas. Ins. Co. v. Travelers Prop. Cas.  
 26 Co., 90 F.Supp.3d 304 (D.N.J. 2014).

27 This Court is aware that there are various other allocation models, and that Courts in other  
 28 jurisdictions have employed alternate models in allocating losses between insurers (i.e., number of

limits, "time on risk," etc.) based on the unique facts before them. In this case, difficulty exists in employing alternate models as not only is the timing of the damages is unknown, the evidence provided this Court is unclear regarding when construction work was performed and or completed. For this reason, this Court declines to adopt a different approach.

Based on the foregoing, this Court concludes that fairness and equity weigh in favor of a equal shares approach.

The policies issued by both Zurich and Ironshore include deductible endorsements generally providing that any coverage obligation attaches in excess of certain sums. Ironshore policies contain varying deductible amounts - \$5,000 for Universal Framing, \$25,000 for Stewart & Sundell and \$10,000 for all other trades. While Zurich's policies generally include lower amounts, payment records generally reflect that Zurich largely received payments back from insureds for any deductible amounts owing.

While the parties agree that deductible amounts may be considered by this Court in reaching an appropriate final allocation, they disagree as to how to do so. Zurich takes the position that the deductible amount should be deducted from the gross amount since its payments offset against the deductible owing under the policies Ironshore issued. Ironshore, in contrast, argues that the deductible amount should be deducted from its net share.

This Court agrees with Zurich and concludes in equity that Zurich's payments offset against any deductible amount owing under the policies Ironshore issued such that any reduction applies to the gross amount incurred, and not Ironshore's net share. See Continental Cas. Co. v. St. Paul Surplus Lines Ins. Co., 803 F.Supp.3d 1113 (E.D. Cal. 2011), citing Montgomery Ward & Co., Inc. v. Imperial Cas. & Indem. Co., 81 Cal.App.4th 356, 370 (2000) and holding that insurance can be used to offset against a deductible in another insurer's policy.

In applying these facts and law, this Court concludes that net amount incurred by Zurich, after reduction for deductibles, is \$976,466 based on the following:

<b>Insured/Matter</b>	<b>Total Incurred</b>	<b>Deductible</b>	<b>Net Incurred</b>
Cedco - Bagley	\$24,437	\$10,000	\$14,437
Cedco - Blasco	\$200,611	\$10,000	\$190,611



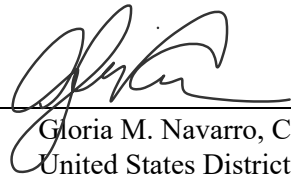
1	Cedco - Ishihama	\$18,222	\$10,000	\$8,222
2	Laird - Cohen	\$78,258	\$10,000	\$68,258
3	Laird - Colford	\$127,746	\$10,000	\$117,746
4	Laird - Stacy	\$97,705	\$10,000	\$87,705
5	Laird - Wright	\$71,593	\$10,000	\$61,593
6	PR Constr. - Epstein	\$9,329	\$10,000	\$0
7	Stewart - Aurora	\$37,689	\$25,000	\$12,689
8	Stewart - Boyer	\$6,139	\$25,000	\$0
9	Stewart - Mystic Bay	\$99,063	\$25,000	\$74,063
10	Stewart - Torrey Pines	\$22,040	\$25,000	\$0
11	Sunworld - Evers	\$51,494	\$10,000	\$41,494
12	Universal - Macias	\$233,180	\$5,000	\$228,180
13	Universal Larkin	\$76,468	\$5,000	\$71,468
14	<b>Totals</b>	<b>\$1,153,974</b>		<b>\$976,466</b>

15 Based on an equal shares approach, this Court awards Zurich \$488,233, constituting one half  
 16 of \$976,466, exclusive of any entitlement to prejudgment interest.

17 To the extent not directly addressed herein, this Court finds any other positions furthered by  
 18 Ironshore to be unavailing, and therefore not impacting the rulings made herein.

19 **IT IS SO ORDERED.**

20 **DATED** this 12 day of October, 2017.

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 23   
 24 Gloria M. Navarro, Chief Judge  
 25 United States District Court  
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