

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

Marcia Rhodes, Harold Rhodes, Individually,)
Harold Rhodes, on Behalf of his Minor Child)
and Next Friend, Rebecca Rhodes,)
Plaintiffs,)

Civil Action No.: 05-1360-BLS2

v.)

AIG Domestic Claims, Inc. f/k/a AIG Technical)
Services, Inc., National Union Fire Insurance)
Company of Pittsburgh, PA, and Zurich)
American Insurance Company,)
Defendants.)

**DEFENDANT ZURICH AMERICAN INSURANCE COMPANY'S OPPOSITION
TO PLAINTIFFS' MOTION FOR CLARIFICATION REGARDING THE
COURT'S FEBRUARY 2, 2006 ORDER ON DISCOVERY SCHEDULE**

Defendant Zurich American Insurance Company ("Zurich") hereby submits its Opposition to Plaintiffs' Motion for Clarification of the Court's February 2, 2006 Order on Discovery Schedule ("Motion for Clarification") and states that the Court should DENY Plaintiffs' Motion for Clarification.

Plaintiffs purport to seek "clarification" of paragraph 5 of the Court's February 2, 2006 Order on Discovery Schedule ("Order") as if that Order was in some way ambiguous or unclear. To the contrary, the Order is perfectly clear and means precisely what it says: that the discovery deadline will be extended "if counsel so requests." There is nothing in the text of the Order to suggest that the Court's reference to "counsel" was restricted to just "Plaintiffs' counsel." Moreover, during the February 2nd conference call between the parties and the Court that

prompted the Court's Order, the Court said nothing to suggest that the discovery period would be extended only at the request of Plaintiffs.

In essence, Plaintiffs are asking the Court to penalize Defendants by precluding them from seeking an extension of the discovery period "on account of the delays that have occurred because of the discovery disputes to date." (Motion for Clarification, at p. 1.) Contrary to Plaintiffs' implication, the "discovery disputes" to which they refer arose from Defendants' reasonable, good faith claims of privilege as to certain categories of documents. Indeed, in its order on Plaintiffs' Motion to Compel Production of Documents, dated January 23, 2006, the Court ruled in favor of Defendants on several critical issues, including the applicability of the joint-defense privilege. Because the "delays" in question were the natural result of good faith disagreements over the scope of permissible discovery, the Court should not indulge Plaintiffs in their present efforts to distort the meaning of the Court's unambiguous Order and penalize Defendants.

It seems clear to Zurich that the Court in its February 2nd Order invited the parties to request an extension of discovery because of its decision to stay depositions in this action pending the outcome of the Defendants' interlocutory appeals of the Court's order on Plaintiffs' Motion to Compel Production of Documents. There is no cause to restrict that invitation to Plaintiffs only.

WHEREFORE, Defendant Zurich American Insurance Company respectfully requests this Court to DENY Plaintiffs' Motion for Clarification Regarding the Court's February 2, 2006 Order on Discovery Schedule, and issue an order clarifying that the Court will extend the July 24, 2006 discovery deadline to September 8, 2006 if counsel for *any party* so requests.

**DEFENDANT,
ZURICH AMERICAN INSURANCE
COMPANY,**
By its attorneys,



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Date: 2/27/06

CERTIFICATE OF SERVICE

I, Danielle Andrews Long, certify that on this 27th day of February, 2006, I caused a copy of the foregoing to be served by first class mail, postage pre-paid, upon:

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