

PURCELL, RIES, SHANNON, MULCAHY & O'NEILL
One Pluckemin Way
P.O. Box 754
Bedminster, NJ 07921
(908) 658-3800

Liaison Counsel for the Primary Insurer Defendants

THE DELACO COMPANY, INC.

Plaintiff,

v.

CENTURY INDEMNITY COMPANY,
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA, PACIFIC
EMPLOYERS INSURANCE COMPANY,
HARTFORD ACCIDENT & INDEMNITY
CO., HARTFORD CASUALTY
INSURANCE CO., STEADFAST
INSURANCE COMPANY, NEW
ENGLAND REINSURANCE
CORPORATION, TWIN CITY FIRE
INSURANCE COMPANY, FIREMAN'S
FUND INSURANCE COMPANY,
AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE
COMPANY f/k/a AMERICAN
INTERNATIONAL SURPLUS LINES
INSURANCE COMPANY, FIRST STATE
INSURANCE COMPANY,
WESTCHESTER FIRE INSURANCE
COMPANY, ZURICH AMERICAN
INSURANCE COMPANY, NATIONAL
UNION FIRE INSURANCE COMPANY
OF PITTSBURGH PA, UNITED STATES
FIDELITY & GUARANTY COMPANY,
MARKEL AMERICAN INSURANCE
COMPANY, ROYAL INSURANCE
COMPANY OF AMERICA, OHIO
CASUALTY INSURANCE COMPANY,
TUDOR INSURANCE COMPANY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : MIDDLESEX COUNTY
DOCKET NO. MID-L-8852-03 (MT)

CIVIL ACTION

MEDIATION ORDER

FILED

JAN 21 2004

JUDGE MARINA CORODEMUS

THE COURT, having conducted case management conferences in this matter on

December 19, 2003 and January 14, 2004, and McCarter & English, L.L.P., counsel for plaintiff Delaco Company Inc., having advised the Court that Delaco is desirous of entering into non-binding mediation with the defendant insurers before a mutually acceptable impartial mediator and counsel for certain of the defendant insurers having advised the Court that they are amenable to participating in non-binding mediation pursuant to mutually acceptable conditions, and plaintiff and the defendants amenable to mediation (hereinafter referred to as the "Participating Parties") having agreed upon the selection and appointment of retired Superior Court of New Jersey Judge, John E. Keefe, Sr., as the mediator, and good cause appearing,

IT IS on this 21 day of January 2004, ORDERED that:

1. The Participating Parties shall participate in mediation before a neutral and impartial person with the goal of reaching a mutually acceptable negotiated resolution of the disputes between them ("Mediation");
2. The Participating Parties jointly retain and the Court does hereby appoint, by mutual request of the Participating Parties, John E. Keefe, Sr., Mediator in this litigation (the "Mediator");
3. The Mediator is authorized to schedule and conduct the mediation process as he deems appropriate, subject to the provisions of this Order;
4. The first mediation session shall begin no later than thirty (30) days from the date of this Order on any date agreed to by the Participating Parties and the Mediator;
5. Except as provided for herein, the Mediation shall be non-binding, and the Mediator shall not have the authority to render a decision that shall bind the Participating Parties;
6. The Participating Parties are not obligated to agree to any proposals which are made during the Mediation;

7. No party shall be bound by anything said or done during the Mediation, unless a written and signed stipulation or agreement is entered into by the Participating Parties;

8. The Mediation and all related settlement discussions, including any such discussions with and/or among the parties and/or their respective counsel prior to or after thereof shall be considered a settlement negotiation for the purpose of all federal and state rules (including but not limited to N.J. Evidence Rule 408), protecting disclosures made during such conferences from later discovery or use in evidence. The entire process shall be confidential, and no stenographic or other record shall be made except as may be agreed to for purposes of memorializing a settlement record. All conduct, oral or written, made during the Mediation or any related settlement discussions by any party or a party's agent, employee, or attorney shall be considered a confidential settlement communication. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery or be admissible for any purpose, including impeachment, in any litigation or other proceeding involving the Participating Parties; provided, however, that evidence otherwise subject to discovery or admission into evidence is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the Mediation or any related settlement discussions;

9. Information obtained by the Mediator, either in written or oral form, shall be confidential and shall not be revealed by the Mediator unless and until the party who provided that information agrees to its disclosure;

10. The Mediator shall periodically report to the Court the status of the Mediation process;

11. The Mediator and his agents shall have the same immunity as judges and court employees under federal and state law, from liability for any act or omission in connection with the Mediation, and from compulsory process to testify or produce documents in connection with the Mediation;

12. The Participating Parties shall not call or subpoena the Mediator, his employees or his associates as a witness or expert in any proceeding relating to: (i) the Mediation, the subject of the Mediation, or any thoughts or impressions which the Mediator may have about the Participating Parties in the Mediation, and (ii) shall not subpoena any notes, documents or other materials prepared by the Mediator in the course of, or in connection with the Mediation, and (iii) shall not offer in evidence any statements, view or opinions of the Mediator; and

13. The Mediator's costs and fees shall be paid by the Participating Parties pursuant to the following agreed upon fee splitting arrangement:

a. All fees and costs associated with plenary mediation sessions (attended by all Participating Parties) shall be billed 50% to Delaco and 50% to the participating defendants;

b. Any one-on-one mediation sessions between Delaco and individual insurers (or groups of affiliated insurers) will be billed 50% to Delaco and 50% to the individual insurer.

Marina Corodemus

Honorable Marina Corodemus, J.S.C.

We hereby consent to the form
and entry of the within Order.

McCarter & English, L.L.P.
Attorneys for Plaintiffs

By: _____
Andrew T. Berry, in his capacity
as Plaintiff's Liaison Counsel

Purcell, Ries, Shannon, Mulcahy & O'Neill
Attorneys for Defendants

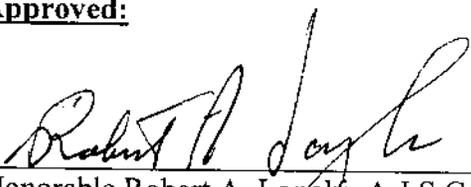
By: _____
Michael F. O'Neill in his capacity
as Liaison Counsel for the
participating primary insurers

Siegel & Napierkowski
Attorneys for Defendants

By: _____
Lawrence Serlin, Esq. in his capacity
as Liaison Counsel for the
participating excess insurers

January ____, 2004

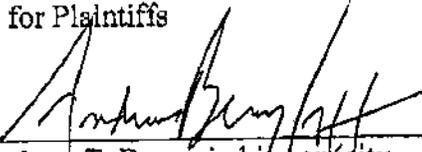
Approved:



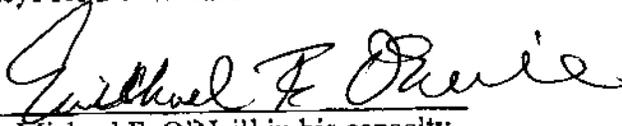
Honorable Robert A. Longhi, A.J.S.C.
Pursuant to Rule 1:40-5

We hereby consent to the form and entry of the within Order.

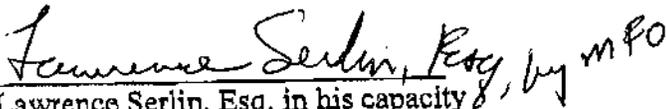
McCarter & English, L.L.P.
Attorneys for Plaintiffs

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Andrew T. Berry, in his capacity
as Plaintiff's Liaison Counsel

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Attorneys for Defendants

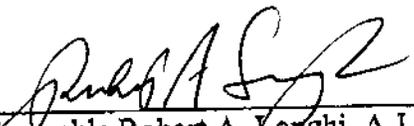
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as Liaison Counsel for the
participating primary insurers

Siegal & Napierkowski
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By: 
Lawrence Serlin, Esq. in his capacity
as Liaison Counsel for the
participating excess insurers

Approved:

January 21, 2004


Honorable Robert A. Longhi, A.J.S.C.
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