

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WESTERN WORLD INSURANCE  
COMPANY,

Plaintiff,

v.

NARCONON OF GEORGIA, INC.,  
NARCONON INTERNATIONAL,  
DELGADO DEVELOPMENT, INC.,  
PATRICK C. DESMOND AND MARY  
C. DESMOND, INDIVIDUALLY,  
AND MARY C. DESMOND, AS  
ADMINISTRATRIX OF THE ESTATE  
OF PATRICK W. DESMOND,

Defendants.

CIVIL ACTION

FILE NO.: 12-CV-2117 AT

**PLAINTIFF'S SUPPLEMENTAL, AMENDED, AND RESTATED  
INITIAL DISCLOSURES**

(1) State precisely the classification of the cause of action being filed, a brief factual outline of the case including Plaintiff's contentions as to what Defendant did or failed to do, and a succinct statement of the legal issues in the case.

**Response: This is a declaratory judgment action seeking an order from the court declaring and determining that Western World Commercial Lines**

Policy No. NPP1123556 issued to Narconon of Georgia, Inc. effective August 19, 2007 to August 19, 2008 (“the Western World Policy”) does not obligate Western World to provide coverage or a defense to Narconon of Georgia, Inc., and Narconon International for all or part of the claims, counts and causes of action set forth against them in the underlying civil action: Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond as Administrator of the Estate of Patrick W. Desmond v. Narconon of Georgia, Inc., Delgado Development, Inc., Lisa Carolina Robbins, M.D., The Robbins Group, Inc., and Narconon International, in the State Court of Dekalb County, Georgia; Civil Action No. 10A-28641-2 (the “Underlying Action”). The specific assertions by Plaintiff in this regard as to the Western World Policy and the reasons that it should be declared not to cover all or part of those allegations are set forth in the Complaint Declaratory Judgment as amended by the First Amendment to Complaint for Declaratory Judgment, and as may be further amended.

Western World also seeks a an order from the Court declaring and determining that: (i) the policy of insurance issued by Nonprofits’ Insurance Alliance of California (“NIAC”) to Narconon International, Policy Number 2007-17800- NPO, effective July 6, 2007 to July 6, 2008, obligates NIAC to

**provide coverage and a defense to Narconon International and other covered persons and entities for all claims, counts, and causes of against Narconon International in the Underlying Action and (ii) that NIAC is obligated to reimburse Western World for the defense fees, costs and expenses expended by Western World to date in the Underlying Action.**

(2) Describe in detail all statutes, codes, regulations, legal principles, standards and customs or usages, and illustrative case law which Plaintiff contends are applicable to this action.

**Response: 28 U.S.C. §§ 2201 and 2202; Fed. R. Civ. P. 38, 39 and 57; 28 U.S.C. §§ 1332 (a) (1); and Georgia principals of insurance contract construction as illustrated in: O'Neal v. State Farm Mut. Auto. Ins. Co., 243 Ga. App. 756, 757 (Ga. Ct. App. 2000); North Metro Directories Publ'g, LLC v. Cotton States Mut. Ins. Co., 279 Ga. App. 492, 495 (Ga. Ct. App. 2006); Shafe v. Am. States Ins. Co., 288 Ga. App. 315, 317 (Ga. Ct. App. 2007); BBL-McCarthy, LLC v. Baldwin Paving Co., 285 Ga. App. 494, 497-498 (Ga. Ct. App. 2007); Claussen v. Aetna Cas. & Surety Co., 259 Ga. 333 (1) (380 S.E.2d 686) (1989); Boardman Petroleum v. Federated Mut. Ins. Co., 269 Ga. 326, 327-328 (Ga. 1998); Allstate Ins. Co. v. Neal, 304 Ga. App. 267 (Ga. Ct. App. 2010); Mingledorff v. Bell, 107 Ga. App. 685, 686-687 (Ga. Ct. App. 1963);**

Travelers Indem. Co. v. Nix, 644 F.2d 1130, 1132 (5th Cir. Ga. 1981); Ga. Mut. Ins. Co. v. Kurtz, 206 Ga. App. 716, 717-718 (Ga. Ct. App. 1992); ALEA London Ltd. v. Woodcock, 286 Ga. App. 572, 574 (Ga. Ct. App. 2007); Nationwide Mut. Fire Ins. Co. v. Somers, 264 Ga. App. 421, 426 (Ga. Ct. App. 2003).

Federated Rural Elec. Ins. Exch. v. R. D. Moody & Assocs., 468 F.3d 1322 (choice of law in diversity actions).

Convergys Corp. v. Keener, 276 Ga. 808, 811, 582 S.E.2d 84, 86 (2003) (Georgia's lex loci contractus.)

In the event that it is determined that California law applies to the NIAC Policy, then California principals of insurance contract construction will be applied pursuant to applicable law, including but not limited to: Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 431, 437 (Cal. 1956); Burr v. Western States Life Ins. Co., 211 Cal. 568, 574-576 (Cal. 1931);

Offshore Rental Co., Inc. v. Continental Oil Co., 22 Cal. 3d 157, 161 (Cal. 1978) (California choice of law analysis); and

Liew v. Official Receiver & Liquidator, 685 F.2d 1192, 1195 (9th Cir. Cal. 1982) (choice of law in diversity actions).

(3) Provide the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information. (Attach witness list to Initial Disclosures as Attachment A.)

**Response: See Attachment A.**

(4) Provide the name of any person who may be used at trial to present evidence under rules 702, 703 or 705 of the Federal Rules of Evidence. For all experts described in Fed.R.Civ.P. 26(a)(2)(B), provide a separate written report satisfying the provisions of that rule. (Attach expert witness list and written reports to Initial Disclosures as Attachment B.)

**Response: See Attachment B.**

(5) Provide a copy of, or description by category and location of, all documents, data compilations, and tangible things in your possession, custody or control that are relevant to disputed facts alleged with particularity in the pleadings. (Attach document list and description to Initial Disclosures as Attachment C.)

**Response: See Attachment C.**

(6) In the space provided below, provide a computation of any category of damages claimed by you. In addition, include a copy of, or describe by category

and location of, the documents or other evidentiary material, not privileged or protected from disclosure on which such computation is based, including materials bearing on the nature and extent of injuries suffered, making such documents or evidentiary materials available for inspection and copying under Fed.R.Civ.P. 34. (Attach any copies and descriptions to Initial Disclosures as Attachment D.)

**Response: This matter is a declaratory judgment action and no damages are claimed; however, Western World does seek an order from the Court declaring and determining that NIAC is obligated to reimburse Western World for the defense fees, costs and expenses expended by Western World to date in the Underlying Action.**

(7) Attach for inspection and copying as under Fed.R.Civ.P. 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment. (Attach copy of insurance agreement to Initial Disclosures as Attachment E.)

**Response: None**

(8) Disclose the full name, address and telephone number of all persons or legal entities who have a subrogation interest in the cause of action set forth in Plaintiff's cause of action and state the basis and extent of such interest.

**Response: None.**

Respectfully Submitted,

s/R. CLAY PORTER

Georgia Bar No. 584825

s/STEPHEN G. SMITH, JR.

Georgia Bar No. 795287

For the Firm

Attorneys for Plaintiff Western World  
Insurance Company

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2012, I electronically filed **PLAINTIFF'S SUPPLEMENTAL, RESTATED, AND AMENDED INITIAL DISCLOSURES** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

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#### FONT CERTIFICATION

THIS IS TO CERTIFY that, pursuant to LR 5.1B, NDGa., the above document was prepared in Times New Roman, 14 pt.

DENNIS, CORRY, PORTER & SMITH, LLP  
s/STEPHEN G. SMITH, JR.  
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**ATTACHMENT A**

- (1) The parties to this action;
- (2) All parties to the Underlying Action;
- (3) All persons identified by the parties to the Underlying Action in the Underlying Action as having discoverable information, including but not limited to those persons identified in the discovery responses exchanged in the Underlying Action as well as all persons having been or to be deposed in the Underlying Action;
- (4) Nonprofits' Insurance Alliance of California, represented by Thomas M. Barton and Aaron P.M. Tady, Coles Barton, LLP, 150 South Perry St., Suite 100, Lawrenceville, Georgia 30046. 770-995-5552.
- (5) Pamela E. Davis, President and Founder of Nonprofits' Insurance Alliance of California c/o Nonprofits' Insurance Alliance of California, P.O. Box 8507, Santa Cruz, California 95061; 800-359-6422.

Plaintiff reserves the right to supplement this response upon the completion of investigation and discovery.

**ATTACHMENT B**

Plaintiff has not designated expert witnesses at present. Plaintiff reserves the right to supplement this response upon the completion of investigation and discovery.

**ATTACHMENT C**

- (1) Western World Commercial Lines Policy No. NPP1123556 issued to Narconon of Georgia, Inc. effective August 19, 2007 to August 19, 2008 (“the Western World Policy”). Said document is in possession of the undersigned counsel for Plaintiff and has also been filed with the Court as an exhibit to the Complaint for Declaratory Judgment. (See Document 1-2);
- (2) All matters on file or to be filed in the Underlying Action, including but not limited to, orders, stipulations, pleadings, motions, memoranda, briefs, discovery requests, discovery responses, and deposition transcripts. Said documents are in the possession of counsel in the underlying state court action. In addition, Counsel for Western World was provided, and has in their possession, a large quantity of documents purported to be those documents referenced hereinabove; however, the completeness of the documents received has yet to be determined.
- (3) All discovery and discovery responses exchanged or to be exchanged between the parties to the Underlying Action. In addition, Counsel for Western World was provided, and has in their possession, a large

quantity of documents purported to be those documents referenced hereinabove; however, the completeness of the documents received has yet to be determined;

- (4) All transcripts of depositions taken or to be taken in the Underlying Action; In addition, Counsel for Western World was provided, and has in their possession, a large quantity of documents purported to be those documents referenced hereinabove; however, the completeness of the documents received has yet to be determined;
- (5) All documents and things exchanged formally or informally between the Parties to the Underlying Action, whether exchanged pursuant to an official discovery request for production of documents or otherwise. In addition, Counsel for Western World was provided, and has in their possession, a large quantity of documents which may include those documents referenced hereinabove; however, the completeness of the documents received has yet to be determined;
- (6) The insurance policy issued to Narconon International by Nonprofits' Insurance Alliance of California, Policy No. 2007-178000-NPO, attached to Document 40-2, filed in this matter. Counsel for Western World is in possession of a copy of the filed document.

Plaintiff reserves the right to supplement this response upon the completion of investigation and discovery. The above referenced documents