

IN THE UNITED STATES DISTRICT COURT  
FOR THE 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.: 1:12-cv-2117-AT

**SECOND JOINT PRELIMINARY REPORT AND DISCOVERY PLAN**

1. Description of Case:

(a) Describe briefly the nature of this action. **This is an action for declaratory judgment seeking a determination that Western World Insurance Company (“Western World”) Commercial Lines Policy No. NPP1123556, which was issued to Narconon of Georgia, Inc., effective August 19, 2007 to August 19, 2008 (the “Policy”), does not afford coverage, whether for**

indemnity or defense, to the named insured or Narconon International for all or part of the claims, counts and causes of action set forth in the Plaintiff's Complaint for Wrongful Death, Pain and Suffering, and Other Damages as amended by the Plaintiffs' First Amended Complaint to Add Allegations and Claims, and any future amendments, as filed in the civil action styled Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond as Administratrix 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. 10-A-28641-2 (the "Underlying Action").

By way of order of the Court and the First Amendment to Complaint for Declaratory Judgment, Nonprofits' Insurance Alliance of California ("NIAC") has been added as a defendant in this action. NIAC issued a policy of commercial liability insurance to Narconon International, Policy No. 2007-17800 NPO ("NIAC Policy"). Western World also seeks a declaration and determination that the NIAC's Policy obligates NIAC to provide coverage and a defense to Narconon International and other covered persons and entities for all allegations against Narconon International in the Underlying Action as set forth in Plaintiff's Complaint for Wrongful Death, Pain and Suffering, and

**Other Damages as amended the First Amended Complaint to Add Allegations and Claims, and as may be amended in the future, and also declaring and determining that NIAC is obligated to reimburse Western World for the defense fees, costs and expenses expended by it to date in the Underlying Action.**

**NIAC denies that it is obligated to defend or cover any of the defendants in the Underlying Action. NIAC also denies that Western World has standing to bring the claims asserted in this action. Finally, NIAC denies that it is subject to the personal jurisdiction of this Court.**

**Western World disputes and denies NIAC's claims that: (i) this court lacks subject matter jurisdiction over the claims asserted by Western World against NIAC; and (ii) this court lacks personal jurisdiction over NIAC.**

(b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.

**In the Underlying Action, Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond as Administratrix of the Estate of Patrick W. Desmond (“Desmond Defendants”) allege that Narconon of Georgia, Inc., and Narconon International are liable for the wrongful death of Patrick W. Desmond and assert claims and causes of action for negligence, negligence per**

**se, fraud and Civil RICO, among other claims and causes of action. Narconon International and Narconon of Georgia, Inc. deny any liability therefor.**

**Narconon of Georgia, Inc. is the named insured and Narconon International is an additional insured under the Western World Policy. In the Underlying Action, Western World has and continues to provide a defense to Narconon of Georgia, Inc., and Narconon International under reservation of rights to deny coverage. Western World contends that all or part of the claims, counts, and causes of action set forth in the Underlying Action by the Desmond Defendants against Narconon of Georgia, Inc., and Narconon International are not covered under the Western World Policy. This declaratory judgment action is brought to determine whether those claims, counts, and causes of action are covered and whether Western World is obligated to defend Narconon of Georgia, Inc., and Narconon International in the Underlying Action.**

**In addition, NIAC has denied coverage to Narconon International under the NIAC Policy for the claims, counts and causes of action set forth in the Underlying Action. NIAC was added as a defendant in this action so that Western World could seek a declaration and determination as to whether those claims, counts, and causes of action set forth in the Underlying Action**

are covered under the NIAC Policy; whether NIAC is obligated to defend Narconon International and/or others in the Underlying Action; and whether NIAC is obligated to reimburse Western World for the fees, costs and expenses of defense expended by Western World in the Underlying Action for the defense of Narconon International.

(c) The legal issues to be tried are as follows: **Whether the subject Western World Policy covers all or part of the claims, counts and causes of action set forth in the Underlying Action by the Desmond Defendants against Narconon of Georgia, Inc., and Narconon International; whether Western World Insurance Company is obligated to provide a defense to Narconon of Georgia, Inc., or Narconon International to the claims, counts, and causes of action set forth in the Underlying Action.**

**Whether the NIAC Policy covers all or part of the claims, counts, and causes of action set forth in the Underlying Action by the Desmond Defendants against Narconon International; whether NIAC is obligated to provide a defense to Narconon International and/or others to the claims, counts and causes of action set forth in the Underlying Action; whether NIAC is obligated to reimburse Western World for the fees, costs and expenses of defense expended by Western World in the Underlying Action for the defense**

of Narconon International; and whether Western World has standing to assert those claims; and whether NIAC is subject to the personal jurisdiction of this Court.

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases: *Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond as Administratrix 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**

(2) Previously Adjudicated Related Cases: **None.**

2. This case is complex because it possesses one or more of the features listed below (please check):

- (1) Unusually large number of parties
- (2) Unusually large number of claims or defenses
- (3) Factual issues are exceptionally complex
- (4) Greater than normal volume of evidence
- (5) Extended discovery period is needed
- (6) Problems locating or preserving evidence
- (7) Pending parallel investigations or action by government
- (8) Multiple use of experts
- (9) Need for discovery outside United States boundaries
- (10) Existence of highly technical issues and proof
- (11) Unusually complex discovery of electronically stored information

**3. Counsel:**

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiff: **R. Clay Porter, Esq.**  
**Stephen G. Smith, Jr.**  
**Dennis, Corry, Porter & Smith, LLP**

Defendant: For Narconon of Georgia, Inc., and Narconon International

**Herman Fussell, Esq.**  
**Foltz Martin, LLC**  
**3525 Piedmont Road, NE**  
**Five Piedmont Center, Suite 750**  
**Atlanta, GA 30305**

For Patrick C. Desmond and Mary C. Desmond, Individually,  
and Mary C. Desmond as Administratrix of the Estate of  
Patrick Desmond

**Jeffrey R. Harris, Esq.**  
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**David S. Bills, Esq.**  
**David S. Bills, P.C.**  
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**Atlanta, GA 30319**

For Defendant NIAC:

**Thomas Barton, Esq.  
Aaron P.M. Tady, Esq.  
Coles Barton, LLP  
150 South Perry Street  
Suite 100  
Lawrenceville, GA 30046**

**4. Jurisdiction:**

Is there any question regarding this Court's jurisdiction?  Yes  No

If "yes," please attach a statement, not to exceed one page, explaining the jurisdictional objection. When there are multiple claims, identify and discuss separately the claim(s) on which the objection is based. Each objection should be supported by authority.

**Please see Exhibit "A" attached hereto prepared by NIAC.**

**Western World disputes and denies NIAC's claims that: (i) this court lacks subject matter jurisdiction over the claims asserted by Western World against NIAC; and (ii) this court lacks personal jurisdiction over NIAC and incorporates herein by reference its response to NIAC's Motion to Dismiss; said response being on file with the Court at Document 44.**

**5. Parties to This Action:**

(a) The following persons are necessary parties who have not been joined: **None.**

(b) The following persons are improperly joined as parties: **None.**

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted: **None.**



(d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

## **6. Amendments to the Pleadings:**

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

(a) List separately any amendments to the pleadings that the parties anticipate will be necessary: **Second Amendment to Complaint for Declaratory Judgment adding the claim of failure to cooperate and setting forth new claims/allegations asserted by the plaintiff's in the Underlying Action.**

(b) Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

## **7. Filing Times For Motions:**

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

(a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

(b) *Summary Judgment Motions*: within thirty days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

(c) *Other Limited Motions*: Refer to Local Rules 7.2A; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) *Motions Objecting to Expert Testimony*: Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

## **8. Initial Disclosures:**

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection. NOTE: Your initial disclosures should include electronically stored information. Refer to Fed.R.Civ.P. 26(a)(1)(B).

**NIAC filed a motion to stay its initial disclosure obligations. Western World consented to said motion. No other responses were filed thereto. The Court has not, to date, ruled on said motion.**

## **9. Request for Scheduling Conference:**

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party. **Not at this time.**

## **10. Discovery Period:**

The discovery period commences thirty days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period. Cases in this Court are assigned to one of the following three discovery tracks: (a) zero month discovery period, (b) four months discovery period, and (c) eight months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing. Please state below the subjects on which discovery may be needed:

**The parties have stipulated to the use of discovery from the Underlying Action and it is not expected that substantial additional discovery is needed. However, the discovery in the Underlying Action is voluminous and once that**

**material is reviewed, the parties may find that some additional discovery is needed.**

If the parties anticipate that additional time beyond that allowed by the assigned discovery track will be needed to complete discovery or that discovery should be conducted in phases or be limited to or focused upon particular issues, please state those reasons in detail below:

**While the parties may find that some amount of discovery is needed beyond that which has been taken in the Underlying Action, that discovery is voluminous and it will take time to assimilate it for use in this case. During that assimilation process, it may be determined that some additional discovery is needed. Plaintiff anticipates filing a motions for summary judgment on all issues of coverage once this process has been completed.**

**On November 19, 2012, the Court entered a minute order placing this matter on the 6 month discovery track.**

**11. Discovery Limitation and Discovery of Electronically Stored Information:**

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed? **None at this time.**

(b) Is any party seeking discovery of electronically stored information?  
\_\_\_\_\_ Yes   X   No – **Not at this time.**

If “yes,”

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

In the absence of agreement on issues regarding discovery of electronically stored information, the parties shall request a scheduling conference in paragraph 9 hereof.

**12. Other Orders:**

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)? **None at this time.**

**13. Settlement Potential:**

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on December 7, 2012, and that they participated in settlement discussions. Other persons who participated in the settlement discussions are listed according to party.

For plaintiff:

**Lead Counsel for Western World Insurance Company**

(signature): s/Stephen G. Smith, Jr.  
**Dennis, Corry, Porter & Smith, LLP**

For defendants:

**Lead Counsel for Narconon of Georgia, Inc., and Narconon International**

(signature): s/Herman Fussell  
**FOLTZ MARTIN, LLC**

**Lead Counsel For Patrick C. Desmond and Mary C. Desmond, Individually, and Mary C. Desmond as Administratrix of the Estate of Patrick Desmond**

(signature): s/David S. Bills  
**DAVID S. BILLS, P.C.**

**Lead Counsel for Nonprofits' Insurance Alliance of California**

(signature): s/Thomas M. Barton  
**COLES BARTON, LLP**

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

- A possibility of settlement before discovery.
- A possibility of settlement after discovery.
- A possibility of settlement, but a conference with the judge is needed.
- No possibility of settlement.

**Settlement options were discussed. No official settlement offers or demands were made. Counsel did discuss potential options for resolving the pending claims via stipulation.**

(c) Counsel() do or () do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is **unscheduled at this time.**

(d) The following specific problems have created a hindrance to settlement of this case. **Dispute as to the applicability of the Plaintiff's Policy and the NIAC Policy, respectively, to the claims, counts and causes of action set forth in the Underlying Action.**

**14. Trial by Magistrate Judge:**

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(b) The parties () do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this \_\_\_\_\_ day \_\_\_\_\_, of 20\_\_.

(b) The parties (  X  ) do not consent to having this case tried before a magistrate judge of this Court.

[SIGNATURES FOLLOW]

Respectfully submitted,

s/Herman Fussell, Esq.

Georgia Bar No. 281100

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s/Stephen G. Smith, Esq.

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[SIGNATURES CONTINUED ON FOLLOWING PAGE]

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tbaron@colesbarton.com

[JUDGE'S SIGNATURE FOLLOWS]



## **SCHEDULING ORDER**

Upon review of the information contained in the Joint Preliminary Report and Discovery Plan form completed and filed by the parties, the Court orders that the time limits for adding parties, amending the pleadings, filing motions, completing discovery, and discussing settlement are as set out in the Federal Rules of Civil Procedure and the Local Rules of this Court, except as herein modified:

IT IS SO ORDERED, this \_\_\_\_\_ day of December, 2012.

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THE HONORABLE AMY TOTENBERG  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2012 I electronically filed **SECOND JOINT PRELIMINARY REPORT AND DISCOVERY PLAN** 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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s/STEPHEN G. SMITH, JR.  
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THIS IS TO CERTIFY that, pursuant to LR 5.1B, NDGa., the above document was prepared in Times New Roman, 14 pt.

s/STEPHEN G. SMITH, JR.  
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**EXHIBIT “A”**

**NIAC’S STATEMENT OF BASES FOR NIAC’S JURISDICTIONAL  
OBJECTIONS**

Western World added NIAC to this action for the purposes of seeking a declaration that NIAC owes duties of defense and coverage with respect to the claims asserted in the Underlying Action under a commercial general liability policy issued by NIAC to Narconon International. NIAC has denied that it owes any duties of defense or coverage to Narconon International, or any other party, with regard to the Underlying Action. Western World does not allege that it is a party to, or a third-party beneficiary of, the NIAC policy issued to Narconon International. Nevertheless, Western World seeks a declaration that “NIAC’s policy of commercial liability insurance obligates it to provide coverage and a defense to Narconon International . . . for all allegations against Narconon International in the Underlying Action.” Western World also seeks a declaration 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.”

NIAC responded to the Amended Complaint by filing, in lieu of an answer, a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and (2). In particular, NIAC contends that Western World lacks standing bring the claims it has asserted against NIAC because it is neither a party to, nor a third-party beneficiary of, the policy with respect to which it seeks a declaration. As such, this Court lacks jurisdiction over the subject matter of those claims. Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla., 641 F.3d 1259, 1264-65 (11th Cir. 2011); Bochese v. Town of Ponce Inlet, 405 F.3d 964, 974 (11th Cir. 2005).

In addition, NIAC shows that this Court lacks personal jurisdiction over it under Georgia’s long-arm statute, O.C.G.A. § 9-10-91(1), and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. U.S. Const. Amend. XIV, § 1. See also Diamond Crystal Brands, Inc. v. Food Movers Int’l, Inc., 593 F.3d 1249, 1257-58 (11th Cir. 2010); Canty v. Fry’s Electronics, Inc., 736 F. Supp. 2d 1352, 1359 (N.D. Ga. 2010).

NIAC also incorporates herein by reference its brief in support of its motion to dismiss [Doc. No. 40].