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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

OLD REPUBLIC INSURANCE
COMPANY,

Plaintiff,

v.

XL INSURANCE AMERICA, INC.,

Defendant.

Case No.: 22-cv-00394-WQH-BGS

**ORDER GRANTING ENTRY OF
STIPULATED PROTECTIVE
ORDER**

The parties request entry of their stipulated protective order. (*See* ECF No. 16.) The Court enters the Protective Order as follows: The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

1 DEFINITIONS

2 1. The term “confidential information” will mean and include information
3 contained or disclosed in any materials, including documents, portions of documents,
4 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
5 testimony, and transcripts of trial testimony and depositions, including data, summaries,
6 and compilations derived therefrom that is deemed to be confidential information by any
7 party to which it belongs.

8 2. The term “materials” will include, but is not be limited to: documents;
9 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
10 material that identify customers or potential customers; price lists or schedules or other
11 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
12 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
13 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
14 compilations from which information can be obtained and translated into reasonably usable
15 form through detection devices; sketches; drawings; notes (including laboratory notebooks
16 and records); reports; instructions; disclosures; other writings; models and prototypes and
17 other physical objects.

18 3. The term “counsel” will mean outside counsel of record, and other attorneys,
19 paralegals, secretaries, and other support staff employed in the law firms identified below:
20 MICHELMAN & ROBINSON, LLP and DENTONS US LLP. “Counsel” also includes in-
21 house attorneys for OLD REPUBLIC INSURANCE COMPANY and in-house attorneys
22 for XL INSURANCE AMERICA, INC.

23 GENERAL RULES

24 4. Each party to this litigation that produces or discloses any materials, answers
25 to interrogatories, responses to requests for admission, trial testimony, deposition
26 testimony, and transcripts of trial testimony and depositions, or information that the
27 producing party believes should be subject to this Protective Order may designate the same
28 as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

1 a. Designation as “CONFIDENTIAL”: Any party may designate information as
2 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the
3 unrestricted disclosure of such information could be potentially prejudicial to the business
4 or operations of such party.

5 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party
6 may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only if, in
7 the good faith belief of such party and its counsel, the information is among that considered
8 to be most sensitive by the party, including but not limited to trade secret or other
9 confidential research, development, financial or other commercial information.

10 5. In the event the producing party elects to produce materials for inspection, no
11 marking need be made by the producing party in advance of the initial inspection. For
12 purposes of the initial inspection, all materials produced will be considered as
13 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to
14 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
15 inspecting party, the producing party must, within a reasonable time prior to producing
16 those materials to the inspecting party, mark the copies of those materials that contain
17 confidential information with the appropriate confidentiality marking.

18 6. Whenever a deposition taken on behalf of any party involves a disclosure of
19 confidential information of any party:

20 a. the deposition or portions of the deposition must be designated as
21 containing confidential information subject to the provisions of this
22 Order; such designation must be made on the record whenever possible,
23 but a party may designate portions of depositions as containing
24 confidential information after transcription of the proceedings; [A]
25 party will have until fourteen (14) days after receipt of the deposition
26 transcript to inform the other party or parties to the action of the
27 portions of the transcript to be designated “CONFIDENTIAL” or
28 “CONFIDENTIAL - FOR COUNSEL ONLY.”

- 1 b. the disclosing party will have the right to exclude from attendance at
2 the deposition, during such time as the confidential information is to be
3 disclosed, any person other than the deponent, counsel (including their
4 staff and associates), the court reporter, and the person(s) agreed upon
5 pursuant to paragraph 8 below; and
- 6 c. the originals of the deposition transcripts and all copies of the
7 deposition must bear the legend “CONFIDENTIAL” or
8 “CONFIDENTIAL - FOR COUNSEL ONLY,” as appropriate, and the
9 original or any copy ultimately presented to a court for filing must not
10 be filed unless it can be accomplished under seal, identified as being
11 subject to this Order, and protected from being opened except by order
12 of this Court.

13 7. All confidential information designated as “CONFIDENTIAL” or
14 “CONFIDENTIAL - FOR COUNSEL ONLY” must not be disclosed by the receiving
15 party to anyone other than those persons designated within this order and must be handled
16 in the manner set forth below and, in any event, must not be used for any purpose other
17 than in connection with this litigation, unless and until such designation is removed either
18 by agreement of the parties, or by order of the Court.

19 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must
20 be viewed only by counsel (as defined in paragraph 3) of the receiving party, by
21 independent experts who have agreed in writing to be bound by the terms of this Order by
22 executing the form attached hereto as Exhibit A, and by court personnel.

23 9. Information designated “confidential” must be viewed only by counsel (as
24 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
25 terms of paragraph 8), by court personnel, and by the additional individuals listed below,
26 provided each such individual has read this Order in advance of disclosure and has agreed
27 in writing to be bound by its terms:

- 28 a) Executives who are required to participate in policy decisions with

1 reference to this action;

2 b) Technical personnel of the parties with whom Counsel for the parties
3 find it necessary to consult, in the discretion of such counsel, in
4 preparation for trial of this action; and

5 c) Stenographic and clerical employees associated with the individuals
6 identified above.

7 10. With respect to material designated “CONFIDENTIAL” or
8 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the
9 document to be its originator, author or a recipient of a copy of the document, may be
10 shown the same.

11 11. All information which has been designated as “CONFIDENTIAL” or
12 “CONFIDENTIAL - FOR COUNSEL ONLY” by the producing or disclosing party, and
13 any and all reproductions of that information, must be retained in the custody of the counsel
14 for the receiving party identified in paragraph 3, except that independent experts authorized
15 to view such information under the terms of this Order may retain custody of copies such
16 as are necessary for their participation in this litigation.

17 12. Before any materials produced in discovery, answers to interrogatories,
18 responses to requests for admissions, deposition transcripts, or other documents which are
19 designated as confidential information are filed with the Court for any purpose, the party
20 seeking to file such material must seek permission of the Court to file the material under
21 seal.

22 13. No document shall be filed under seal unless counsel secures a court order
23 allowing the filing of a document under seal. An application to file a document under seal
24 shall be served on opposing counsel, and on the person or entity that has custody and
25 control of the document, if different from opposing counsel. If opposing counsel, or the
26 person or entity who has custody and control of the document, wishes to oppose the
27 application, he/she must contact the chambers of the judge who will rule on the application,
28 to notify the judge’s staff that an opposition to the application will be filed.

1 14. If an application to file a document under seal is granted by Judge Skomal, a
2 redacted version of the document shall be e-filed. A courtesy copy of the unredacted
3 document shall be delivered to Judge Skomal's chambers.

4 15. At any stage of these proceedings, any party may object to a designation of
5 the materials as confidential information. The party objecting to confidentiality must
6 notify, in writing, counsel for the designating party of the objected-to materials and the
7 grounds for the objection. If the dispute is not resolved consensually between the parties
8 within seven (7) days of receipt of such a notice of objections, the objecting party may
9 move the Court for a ruling on the objection. The parties are required to comply with Hon.
10 Skomal's procedures for discovery disputes, including his 30-Day Rule as set forth in
11 Chambers Rule V. The materials at issue must be treated as confidential information, as
12 designated by the designating party, until the Court has ruled on the objection or the matter
13 has been otherwise resolved.

14 16. All confidential information must be held in confidence by those inspecting
15 or receiving it, and must be used only for purposes of this action. Counsel for each party,
16 and each person receiving confidential information must take reasonable precautions to
17 prevent the unauthorized or inadvertent disclosure of such information. If confidential
18 information is disclosed to any person other than a person authorized by this Order, the
19 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
20 relating to the unauthorized disclosure to the attention of the other parties and, without
21 prejudice to any rights and remedies of the other parties, make every effort to prevent
22 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

23 17. No party will be responsible to another party for disclosure of confidential
24 information under this Order if the information in question is not labeled or otherwise
25 identified as such in accordance with this Order.

26 18. If a party, through inadvertence, produces any confidential information
27 without labeling or marking or otherwise designating it as such in accordance with this
28 Order, the designating party may give written notice to the receiving party that the

1 document or thing produced is deemed confidential information, and that the document or
2 thing produced should be treated as such in accordance with that designation under this
3 Order. The receiving party must treat the materials as confidential once the designating
4 party so notifies the receiving party. If the receiving party has disclosed the materials before
5 receiving the designation, the receiving party must notify the designating party in writing
6 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
7 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
8 “CONFIDENTIAL - FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE ORDER.

9 19. Nothing within this order will prejudice the right of any party to object to the
10 production of any discovery material on the grounds that the material is protected as
11 privileged or as attorney work product.

12 20. Nothing in this Order will bar counsel from rendering advice to their clients
13 with respect to this litigation and, in the course thereof, relying upon any information
14 designated as confidential information, provided that the contents of the information must
15 not be disclosed.

16 21. This Order will be without prejudice to the right of any party to oppose
17 production of any information for lack of relevance or any other ground other than the mere
18 presence of confidential information. The existence of this Order must not be used by either
19 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
20 Procedure.

21 22. Nothing within this order will be construed to prevent disclosure of
22 confidential information if such disclosure is required by law or by order of the Court.

23 23. Upon final termination of this action, including any and all appeals, counsel
24 for each party must, upon request of the producing party, return all confidential information
25 to the party that produced the information, including any copies, excerpts, and summaries
26 of that information, or must destroy same at the option of the receiving party, and must
27 purge all such information from all machine-readable media on which it resides.
28 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,

1 memoranda, motions, and other documents filed with the Court that refer to or incorporate
2 confidential information, and will continue to be bound by this Order with respect to all
3 such retained information. Further, attorney work product materials that contain
4 confidential information need not be destroyed, but, if they are not destroyed, the person
5 in possession of the attorney work product will continue to be bound by this Order with
6 respect to all such retained information.

7 24. Upon final termination of this action, including any and all appeals, the Court
8 shall return all confidential information to the party that provided that information. The
9 information shall be returned no later than six (6) months after the final termination of this
10 action. Furthermore, any action by this Court to return such information must be preceded
11 by an ex parte motion for an order authorizing the return of all CONFIDENTIAL and
12 CONFIDENTIAL – FOR COUNSEL ONLY Material to the party that produced the
13 information.

14 25. The restrictions and obligations set forth within this order will not apply to
15 any information that: (a) the parties agree should not be designated confidential
16 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
17 parties agree, or the Court rules, has become public knowledge other than as a result of
18 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
19 (d) has come or will come into the receiving party's legitimate knowledge independently
20 of the production by the designating party. Prior knowledge must be established by pre-
21 production documentation or other evidence.

22 26. The restrictions and obligations within this order will not be deemed to
23 prohibit discussions of any confidential information with anyone if that person already has
24 or obtains legitimate possession of that information.

25 27. Transmission by email or some other currently utilized method of
26 transmission is acceptable for all notification purposes within this Order.

27 28. This Order may be modified by agreement of the parties, subject to approval
28 by the Court.

1 29. The Court may modify the terms and conditions of this Order for good cause,
2 or in the interest of justice, or on its own order at any time in these proceedings. The parties
3 prefer that the Court provide them with notice of the Court’s intent to modify the Order
4 and the content of those modifications, prior to entry of such an order.

5 30. Without separate court order, the Protective Order and the parties’ stipulation
6 does not change, amend, or circumvent any court rule or local rule.

7 **IT IS SO ORDERED.**

8 Dated: June 9, 2022

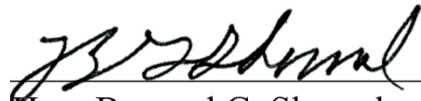
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10 Hon. Bernard G. Skomal
11 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued by
6 the United States District Court for the Southern District of California on [date] in the case
7 of OLD REPUBLIC INSURANCE COMPANY v. XL INSURANCE AMERICA, INC.,
8 Case No. 3:22-CV-00394-WQH-BGS. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Southern District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and telephone
20 number] as my California agent for service of process in connection with this action or any
21 proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

[printed name]

26 Signature: _____

[signature]