

1 IAN P. GILLAN, ESQ.  
 Nevada Bar No. 9034  
 2 KOELLER NEBEKER CARLSON & HALUCK, LLP  
 300 South Fourth Street, Suite 500  
 3 Las Vegas, NV 89101  
 4 Phone: (702) 853-5500  
 Fax: (702) 853-5599

5 GREGORY J. KERWIN, ESQ.  
 Nevada Bar No. 12417  
 6 GIBSON, DUNN & CRUTCHER LLP  
 7 1801 California Street, Suite 4200  
 8 Denver, Colorado 80202  
 9 Phone: (303) 298-5739  
 Fax: (303) 313-2829

10 Attorneys for Defendant,  
 COLORADO CASUALTY INSURANCE COMPANY

11  
 12 **UNITED STATES DISTRICT COURT**  
 13 **DISTRICT OF NEVADA**

14 COLONY INSURANCE COMPANY,	)	CASE NO. 2:12-cv-1727
	)	
15 Plaintiff,	)	
	)	<b>STIPULATION AND</b>
16 vs.	)	<b>PROTECTIVE ORDER</b>
	)	
17 COLORADO CASUALTY INSURANCE	)	
18 COMPANY; DOES 1-10, and ROE	)	
19 CORPORATIONS 1-10, inclusive.	)	
	)	
20 Defendants.	)	
	)	

21 Subject to the approval of this Court, the parties, by and through their attorneys of  
 22 record, hereby stipulate to the following Protective Order:

23 To expedite the flow of discovery, facilitate the prompt resolution of disputes over  
 24 confidentiality, adequately protect material claimed to be confidential, and ensure that  
 25 protection is afforded only to material so designated, it is, pursuant to the Court's authority  
 26 under Federal Rule of Civil Procedure 26(c), hereby **ORDERED** that this Protective Order shall  
 27 govern the disclosure, handling and disposition of documents and information in this litigation  
 28 as follows:

1  
2           1.     **Application.**

3           1.1     This Protective Order shall govern any document, information or other  
4 material produced in discovery in this case that contains confidential or private information  
5 which was produced or created in connection with the underlying lawsuit that is designated as  
6 containing "Confidential Information" as defined herein, and is produced in connection with  
7 this litigation by any person or entity [hereinafter referred to as the "producing party"], whether  
8 in response to a discovery request, subpoena or otherwise, to any other person or entity  
9 [hereinafter referred to as the "receiving party"], regardless of whether the person or entity  
10 producing or receiving such information is a party to this litigation.

11           2.     **Definitions.**

12           2.1     Confidential Information. "Confidential Information" shall mean and  
13 include, without limitation, any non-public information that concerns or relates to the following  
14 areas: confidential proprietary information, trade secrets, security and surveillance policies,  
15 practices and procedures, commercial, financial, pricing, budgeting, and/or accounting  
16 information, information about existing and potential customers, marketing studies,  
17 performance projections, business strategies, decisions and/or negotiations, personnel  
18 compensation, evaluations and other employment information, and confidential proprietary  
19 information about affiliates, parents, subsidiaries and third-parties with whom the parties to this  
20 action have or have had business relationships. "Confidential information" may be contained in  
21 the following documents: manuals, contracts, correspondence (electronic or otherwise),  
22 blueprints, specifications, drawings, security records, security reports, security shift information  
23 and staffing levels, security patrols, security policies and procedures, locations of surveillance  
24 and security cameras, documents regarding surveillance and security camera capabilities,  
25 production documents, analytical reports, certification-related documents, meeting minutes,  
26 meeting notices, presentation documents, and other documents. "Confidential information" also  
27 includes privileged communications between defense counsel hired to defend the insured in the  
28 underlying personal injury lawsuit and the two insurance companies that are parties to this case



1 (Colony and Colorado Casualty). In allowing this confidential designation for privileged  
2 communications, the parties are seeking to preserve, and not waive, the privilege applicable to  
3 such communications because both insurance companies were entitled to see such privileged  
4 communications.

5 2.2 Documents. As used herein, the term "documents" includes all writings,  
6 records, files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact  
7 discs, electronic messages, other data compilations from which information can be obtained and  
8 other tangible things subject to production under the Federal Rules of Civil Procedure.

9 3. **Initial Designation.**

10 3.1 Good Faith Claims. Claims of confidentiality will be made only with  
11 respect to documents; other tangible things and information that the asserting party has a good  
12 faith belief are within the definition set forth in subparagraph 2.1 of this Protective Order.  
13 Objections to such claims made pursuant to paragraph 5, below, shall also be made only in good  
14 faith.

15 3.2 Produced Documents. A party producing documents that it believes  
16 constitute or contain Confidential Information shall state that the material is being produced  
17 under this Protective Order by describing the documents or materials to be treated as  
18 confidential in writing, by page or bates number wherever possible, and/or shall produce copies  
19 bearing a label that contains or includes language substantially identical to the following:

20 **CONFIDENTIAL**

21 This label shall be affixed in a manner that does not obliterate or obscure the contents of  
22 the copies. If any person or party makes copies of documents designated as containing  
23 Confidential Information, the copying person or party shall mark each such copy as containing  
24 Confidential Information in the same form as the Confidentiality notice on the original  
25 document.

26 A party producing documents that are stored on electronic, magnetic, optical or other  
27 non-paper media, such as compact discs, DVD's, video tapes and audio tapes (collectively,  
28 "data storage devices") shall designate the data storage device as containing Confidential

1 Information, by affixing a label or stamp to the data storage device in the manner described  
2 above at the time copies of such data storage devices are produced. If the receiving party or  
3 other persons or entities to whom disclosure is authorized pursuant to subparagraph 7.1 make a  
4 copy of any data storage device designated by the producing party as containing Confidential  
5 Information, the receiving party or other authorized person shall mark each such copy as  
6 containing Confidential Information in the same form as the confidentiality notice on the  
7 original data storage device produced. If the receiving party or other authorized person prints  
8 out or otherwise makes copies of the documents or information stored on such data storage  
9 device, the receiving party or other authorized person shall mark each page so copied with the  
10 label or stamp specified in subparagraph 3.2.

11           3.3 Interrogatory Answers. If a party answering an interrogatory or other  
12 discovery demand believes that its answer contains Confidential Information, it shall set forth  
13 that answer in a separate document that is produced and designated in the same manner as a  
14 produced document under subparagraph 3.2. Such answers should make reference to the  
15 separately-produced document containing the answer, but such document should not be attached  
16 to the response.

17           3.4 Inspection of Documents. In the event a party elects to produce files and  
18 records for inspection and the requesting party elects to inspect them, no designation of  
19 Confidential Information needs to be made in advance of the inspection. For purposes of such  
20 inspection, all material produced shall be considered as Confidential Information. If the  
21 inspecting party selects specified documents to be copied, the producing party shall designate  
22 Confidential Information in accordance with subparagraph 3.2 at the time the copies are  
23 produced.

24           3.5 Deposition Transcripts. Within twenty-one (21) days after the receipt of a  
25 deposition transcript, a party may inform the other parties to the action of the portions of the  
26 transcript that it wishes to designate as Confidential Information. Until such time has elapsed,  
27 deposition transcripts in their entirety are to be considered as Confidential Information. All  
28 parties in possession of a copy of a designated deposition transcript shall mark it appropriately.



1 The court reporter shall comply with and be bound by this Order. In the event that the party  
2 furnishing deposition testimony designates portions or all of that testimony as Confidential  
3 Information, the court reporter shall separately transcribe and submit under seal, to counsel for  
4 the parties, transcriptions of the testimony so designated. Confidential transcripts of deposition  
5 testimony shall be treated the same and afforded the same protections as other documents and  
6 materials designated as Confidential Information under this Order.

7           3.6 Multi-page Documents. A party may designate all pages of an integrated,  
8 multi-page document, including a deposition transcript and interrogatory answers, as  
9 Confidential Information by placing the label specified in subparagraph 3.2 on the first page of  
10 the document or on each page of the document. If a party wishes to designate only certain  
11 portions of an integrated, multi-page document as Confidential Information, it should designate  
12 such portions immediately below the label on the first page of the document and place the label  
13 specified in subparagraph 3.2 on each page of the document containing Confidential  
14 Information.

15           4.     **Designations by Another Party.**

16           4.1 Notification of Designation. If a party other than the producing party  
17 believes that a producing party has produced a document that contains or constitutes  
18 Confidential Information of the non-producing party, the non-producing party may designate  
19 the document as Confidential Information by so notifying all parties in writing within fourteen  
20 (14) days of service of the document.

21           4.2 Return of Documents; Non-disclosure. Whenever a party other than the  
22 producing party designates a document produced by a producing party as Confidential  
23 Information in accordance with subparagraph 4.1, each party receiving the document shall  
24 either add the Confidential Information designation in accordance with subparagraph 3.2 or  
25 substitute a copy of the document bearing such designation for each copy of the document  
26 produced by the producing party. Each party shall destroy all undesignated copies of the  
27 document or return those copies to the producing party, at the direction of the producing party.  
28 No party shall disclose a produced document to any person, other than the persons authorized to



1 receive Confidential Information under subparagraph 7.1, until after the expiration of the  
2 fourteen (14) day designation period specified in subparagraph 4.1. If during the fourteen (14)  
3 day designation period a party discloses a produced document to a person authorized to receive  
4 Confidential Information under subparagraph 7.1, and that document is subsequently designated  
5 as Confidential Information in accordance with subparagraph 4.1, the disclosing party shall  
6 cause all copies of the document to be destroyed or returned to the producing party, at the  
7 direction of the producing party. The party may thereafter disclose a copy of the document that  
8 has been marked as Confidential Information by the designating party, in accordance with  
9 subparagraphs 3.2 and 7.1.

10       5.     **Objections to Designations.** Any party objecting to a designation of  
11 Confidential Information, including objections to portions of designations of multi-page  
12 documents, shall notify the designating party and all other parties of the objection in writing up  
13 to and through 70 days before trial of the matter. This notice must specifically identify each  
14 document that the objecting party in good faith believes should not be designated as  
15 Confidential Information and provide a brief statement of the grounds for such belief. In  
16 accordance with the Federal Rules of Civil Procedure governing discovery disputes, the  
17 objecting and the designating parties thereafter shall confer within ten (10) days after the date of  
18 such objection in an attempt to resolve their differences. If the parties are unable to resolve their  
19 differences, the objecting party shall have twenty one (21) days after the conference concludes  
20 to file with the Court a motion to remove the Confidential Information. Where a party authored,  
21 created, owns, or controls a document, information or other material that another party  
22 designates as Confidential Information, the party that authored, created, owns, or controls the  
23 Confidential Information may so inform the objecting party and thereafter shall also be  
24 considered a designating party for purposes of this paragraph.

25       All documents, information and other materials initially designated as Confidential  
26 Information shall be treated as such in accordance with this Protective Order unless and until the  
27 Court rules otherwise, except for deposition transcripts and exhibits initially considered as  
28 containing Confidential Information under subparagraph 3.5, which will lose their confidential

1 status after twenty-one (21) days unless so designated as Confidential Information. If the Court  
2 rules that a designation should not be maintained as to a particular document, the producing  
3 party shall, upon written request by a party, provide that party a copy of that document without  
4 the designation described in subparagraph 3.2.

5 If an objecting party elects not to make such a motion with respect to documents within  
6 twenty one (21) days after the conference, information or other materials to which an objection  
7 has been made, the objection shall be deemed withdrawn. The designating party shall have  
8 twenty one (21) days to respond to the objecting party's motion. If no response is filed by the  
9 designating party within twenty one (21) days, the designating party shall be deemed to have  
10 consented to the objecting party's motion pursuant to LR 7-2(d).

11 6. **Custody.** All Confidential Information and any and all copies, extracts and  
12 summaries thereof, including memoranda relating thereto, shall be retained by the receiving  
13 party in the custody of counsel of record, or by persons to whom disclosure is authorized under  
14 subparagraph 7.1.

15 7. **Handling Prior to Trial.**

16 7.1 Authorized Disclosures. Confidential Information shall be disclosed by  
17 the receiving party only to the following persons:

- 18 a. Counsel for the parties in this litigation, including their associates, clerks, paralegals,  
19 and secretarial personnel;
- 20 b. Qualified persons taking testimony in this litigation involving such Confidential  
21 Information, and necessary stenographic, videotape and clerical personnel;
- 22 c. Experts and their staff who are retained by counsel as expert witnesses for a party in this  
23 litigation;
- 24 d. Experts and their staff who are consulted by counsel for a party in this litigation;
- 25 e. Parties to this litigation, limited to the named party and, if that party is a corporate entity,  
26 a limited number of employees of the corporate entity and its insurers;
- 27 f. Designated in-house counsel and a limited number of assistants, administrative or  
28 otherwise;



- 1 g. Outside vendors employed by counsel for copying, scanning and general handling of  
2 documents;
- 3 h. Any person of whom testimony is taken regarding the Confidential Information, except  
4 that such person may only be shown Confidential Information during his/her testimony,  
5 and may not retain a copy of such Confidential Information; and
- 6 i. This Court and this Court's staff, subject to the Court's processes for filing materials  
7 under seal.

8 Such disclosures are authorized only to the extent necessary to investigate, prosecute, or  
9 defend the litigation.

10 Confidential Information may not be disclosed to persons under subparagraphs (c) or (d)  
11 until the receiving party has obtained a written acknowledgment from the person receiving  
12 Confidential Information, in the form of the Declaration attached hereto as Exhibit A, that he or  
13 she has received a copy of this Protective Order and has agreed to be bound by it. A party who  
14 discloses Confidential Information in accordance with subparagraph 7.1 shall retain the written  
15 acknowledgment from each person receiving Confidential Information, shall maintain a list of  
16 all persons to whom a receiving party has disclosed Confidential Information and identify what  
17 documents have been disclosed, and shall furnish the written acknowledgments and disclosure  
18 list to opposing counsel as follows: (i) for a person under subparagraph (c), within thirty (30)  
19 days after the person signs the Declaration; and (ii) for a person under subparagraph (d), within  
20 thirty (30) days after the matter is finally concluded. A party who discloses Confidential  
21 Information in accordance with subparagraph 7.1 shall also furnish the written  
22 acknowledgements and disclosures list to the Court for in camera review upon its request or  
23 order. Furnishing the written acknowledgments and disclosure list to the Court shall not  
24 constitute a waiver of the attorney work product or attorney-client privilege. Disclosure of  
25 Confidential Information to this Court, including judicial staff, shall be made in accordance with  
26 subparagraph 7.4 of this Protective Order.

27 7.2 Unauthorized Disclosures. All persons receiving Confidential  
28 Information under the terms of this Protective Order are under the jurisdiction of the state courts



1 and U.S. federal courts located in Nevada for all matters arising from the improper disclosure or  
2 use of such information. If Confidential Information is disclosed to any person other than in the  
3 manner authorized by this Protective Order, the party or person responsible for the disclosure,  
4 and any other party or person who is subject to this Protective Order and learns of such  
5 disclosure, shall immediately bring such disclosure to the attention of the designating party.  
6 Without prejudice to other rights and remedies of the designating party, the responsible party or  
7 person shall make every effort to obtain and return the Confidential Information and to prevent  
8 further disclosure on its own part or on the part of the person who was the unauthorized  
9 recipient of such information.

10           7.3     **Court Filings.** In the event any Confidential Information must be filed  
11 with the Court prior to trial, the proposed filing shall comply with the Federal Rules of Civil  
12 Procedure and the requirements set forth in *Kamakana v. City and County of Honolulu*, 447  
13 F.3d 1172 (9th Cir. 2006). In accordance with these rules and requirements, the proposed filing  
14 shall be accompanied by a motion to file the Confidential Information under seal and a proposed  
15 order, and the application and proposed order shall be directed to the judge to whom the  
16 Confidential Information is directed. This provision is applicable to briefs, memoranda, and  
17 other filings which quote, summarize, or describe Confidential Information.

18           8.     **Care in Storage.** Any person in possession of Confidential Information  
19 produced by another party shall exercise reasonable and appropriate care with regard to the  
20 storage, custody, copying, and use of such information to ensure that the confidential and  
21 sensitive nature of same is maintained.

22           9.     **Handling During Trial.** Confidential Information that is subject to this Order  
23 may be marked and used as trial exhibits by either party, subject to terms and conditions as  
24 imposed by the Court upon application by any party.

25           10.    **No Implied Waivers.** This Protective Order shall not be interpreted as a waiver  
26 of the right to object, under applicable law, to the furnishing of information in response to  
27 discovery requests or to object to a requested inspection of documents or facilities. Parties  
28 producing Confidential Information in this litigation are doing so only pursuant to the terms of

1 this Protective Order. The taking of any action in accordance with the provisions of this  
2 Protective Order shall not be interpreted as a waiver of any claim or position or defense in this  
3 action, or any other actions.

4 11. **No Admission**. The designation of any item as Confidential Information shall  
5 not be construed as an admission that such material, or any testimony concerning such material,  
6 would be admissible in evidence in this litigation or in any other proceeding.

7 12. **Inadvertent Disclosure**. Nothing in this Protective Order abridges applicable  
8 law concerning inadvertent disclosure of a document that the Disclosing Party believes contains  
9 attorney-client communications, attorney work product, or otherwise privileged information. In  
10 the event a party inadvertently discloses documents or information subject to a claim of  
11 privilege or work product protection, such disclosure will not waive otherwise applicable claims  
12 of privilege or work product protection under applicable law. Upon discovery by the Receiving  
13 Party, or receipt of written notice from the Disclosing Party identifying privileged or protected  
14 Documents that the Disclosing Party contends were inadvertently produced, the Receiving Party  
15 shall immediately cease any further review or use of the allegedly privileged documents at issue  
16 and within seven (7) business days either: (a) return or certify the destruction of all such  
17 documents, all copies, and any work product or portions of any work product containing or  
18 reflecting the contents of the subject materials; or (b) after attempting to resolve any dispute  
19 with opposing counsel informally, file a motion to challenge the assertion of privilege and  
20 (without further review of the documents) tender the subject documents for in camera review  
21 with the motion. The moving party shall do nothing to compromise the privilege claim until the  
22 Court rules on said motion and the opportunity for appellate review is exhausted or the issue is  
23 otherwise resolved.

24 13. **Parties' Own Documents**. This Protective Order shall in no way restrict the  
25 parties in their use of their own documents and information, and nothing in this Protective Order  
26 shall preclude any party from voluntarily disclosing its own documents or information to any  
27 party or nonparty.



1           14.    **Motion to Compel Production of Confidential Information.** If any third party  
2 subpoenas Confidential Information from a party to this action or moves to compel a party to  
3 this action to produce any such information, such party shall immediately notify the parties who  
4 originally produced and/or designated such information that a subpoena has been served or a  
5 motion has been made in order to allow the parties who originally produced and/or designated  
6 such information the opportunity to seek a protective order or oppose the motion or application.  
7 If, within thirty (30) days after receiving notice of a subpoena seeking Confidential Information  
8 from a receiving party, the party who originally produced and/or designated such information  
9 fails to move for a protective order, the party subject to the subpoena may produce said  
10 information. In addition, if a party is ordered to produce Confidential Information covered by  
11 this Protective Order, then notice and, if available, a copy of the order compelling disclosure  
12 shall immediately be given the parties who originally produced and/or designated such  
13 information. Nothing in this Protective Order shall be construed as requiring the party who is  
14 ordered to produce such Confidential Information to challenge or appeal any order requiring the  
15 production of such information or to subject himself/herself to any penalty for non-compliance  
16 with any legal process or seek any relief from the Court.

17           15.    **No Effect on Other Rights.** This Protective Order shall in no way abrogate or  
18 diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party  
19 with respect to Confidential Information.

20           16.    **Modification.** In the event any party hereto seeks a Court order to modify the  
21 terms of this Protective Order, or seeks a protective order which incorporates the terms and  
22 conditions of this Protective Order said party shall make such request by written stipulation or  
23 noticed motion to all parties that must be served and filed in accordance with local court rules.

24           17.    **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to  
25 whom disclosure was made agree to return all Confidential Information to the designating party  
26 within ninety (90) days of the conclusion of litigation between the parties, including final  
27 appellate action or the expiration of time to appeal or seek further review. In addition, counsel  
28 shall certify in writing that all such Confidential Information has been returned. Counsel for

1 each party also shall contact each person to whom that party has provided a copy of any  
2 Confidential Information and request the documents be returned. In lieu of returning  
3 Confidential Information, the person or party in possession of such information may elect to  
4 destroy it. If the person or party in possession of Confidential Information elects to destroy it  
5 rather than return it, that person or party must notify the designating party in writing of the  
6 destruction of the information within ninety (90) days of the conclusion of litigation between  
7 the parties, including final appellate action or the expiration of time to appeal or seek further  
8 review.

9 **18. Survival of the Terms of this Protective Order.** Even after the termination of this  
10 litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect  
11 until a Designating Party otherwise in writing or a court order otherwise directs.

12 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of May, 2013.

13 DATED this 23<sup>rd</sup> day of May, 2013.

DATED this 23<sup>rd</sup> day of May, 2013.

14 STEPHENSON & DICKINSON, P.C.

KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

17 By: /s/ Marsha L. Stephenson  
18 MARSHA L. STEPHENSON, ESQ.  
19 Nevada Bar No. 6130  
20 2820 West Charleston Boulevard, # 19  
21 Las Vegas, NV 89102  
22 Attorneys for Plaintiff,  
23 COLONY INSURANCE COMPANY

By: /s/ Ian P. Gillan  
IAN P. GILLAN, ESQ.  
Nevada Bar No. 9034  
300 South Fourth Street, Suite 500  
Las Vegas, NV 89101  
Attorneys for Defendant,  
COLORADO CASUALTY INSURANCE  
COMPANY

GIBSON, DUNN & CRUTCHER LLP

24  
25 By: /s/ Gregory J. Kerwin  
26 GREGORY J. KERWIN, ESQ.  
27 Nevada Bar No. 12417  
28 1801 California Street, Suite 4200  
Denver, Colorado 80202  
Attorneys for Defendant,  
COLORADO CASUALTY  
INSURANCE COMPANY

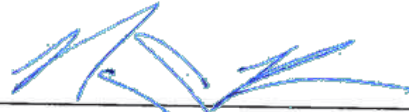


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

IT IS SO ORDERED.

Dated: May 24, 2013.



---

U.S. MAGISTRATE JUDGE

1 EXHIBIT A

2 DECLARATION RE: PROTECTIVE ORDER

3 I, \_\_\_\_\_, hereby declare

4 1. I have reviewed the Stipulation and Protective Order ("Order") entered in -  
5 \_\_\_\_\_ and am familiar with its contents.

6 2. As a condition to being permitted access to material determined to be  
7 "Confidential" in the above-captioned matter, I agree to be bound by the terms and conditions  
8 of the Order, and I promise to comply with the Order.

9 3. As a further condition to being permitted access to material determined to be  
10 "Confidential" in the above-captioned matter, I agree (i) not to disclose to anyone any  
11 documents, materials or information marked "Confidential;" and (ii) not to make any copies of  
12 any documents, material or information marked "Confidential" furnished to me.

13 4. As a further condition to being permitted access to material determined to be  
14 "Confidential" in the above-captioned matter, I agree on behalf of myself and, to the extent  
15 applicable, my employer and/or employees, to submit to personal jurisdiction before the above-  
16 entitled Court for purposes of any dispute arising from the Order, including its enforcement.

17 I declare under penalty of perjury under the laws of the United States that the foregoing  
18 is true and correct.

19 Executed on \_\_\_\_\_, at \_\_\_\_\_  
20 [Date] [City/State]

21 Signature: \_\_\_\_\_

22 Printed Name: \_\_\_\_\_  
23  
24  
25  
26  
27  
28