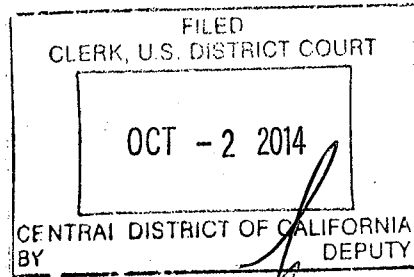


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCOTT T. BRANDT, an individual,
Plaintiff,

v.

AMERICAN INTERNATIONAL
SPECIALTY LINES INSURANCE
COMPANY, CHARTIS SPECIALTY
INSURANCE COMPANY, BCS
INSURANCE COMPANY, ZURICH
AMERICAN INSURANCE
COMPANY and DOES 1-50, Inclusive,
Defendants.

Case No. 2:13-cv-4452-AB (Ex)

~~PROPOSED~~ PROTECTIVE
ORDER

[Filed concurrently with Stipulation for
Protective Order]

After having reviewed the Stipulation for Protective Order, and good cause appearing, the Court orders as follows:

- Any party in the lawsuit styled Brandt v. American International Specialty Lines Insurance Company, et al., U.S.D.C. Case No. Case No. 2:13-cv-4452-ABC (Ex) (the "Case"), may, by written notice, or by a statement on the record at a deposition, designate any material that the party in good faith believes to be confidential, privileged, private, commercial, financial information, or "trade

1 secrets” as defined in California Civil Code section 3426.1¹ and incorporated
2 herein by this reference, not previously made available to the public or the
3 receiving party, as “CONFIDENTIAL” under the terms of this Protective Order.

4 2. Documents that contain non-public information may be designated as
5 “CONFIDENTIAL” in the manner described below for materials concerning the
6 producing party’s trade secrets (as defined in California Civil Code section 3426.1)
7 or other proprietary or confidential financial, operational, research and
8 development or commercially sensitive information, information that implicates
9 privacy rights, or information as to which the producing party otherwise has a
10 business or legal need for confidentiality. The documents which may be
11 designated as “CONFIDENTIAL” contain the following categories of information
12 that the Parties have thus far identified as potentially requiring protection under
13 this Protective Order:

- 14 • attorney fee billing invoices;
- 15 • claims handling manuals, procedures, guides and training
16 materials;
- 17 • underwriting manuals, procedures, guides and training
18 materials;

19 3. The foregoing categories of information may be found in any of the
20 following types of documents, all of which may be designated as
21 “CONFIDENTIAL” under this Protective Order, as appropriate:

- 22 (a) exhibits, answers to interrogatories, responses to requests for
23 admissions and deposition transcriptions and all original
24

25 _____
26 ¹ California Civil Code Section 3426.1(d) provides: “Trade secret shall mean
27 information, including, but not limited to, a drawing, formula, pattern, compilation,
28 program, device, method, technique, code, or process that: (a) Derives independent
economic value, actual or potential, from not being known to, and not being
ascertainable by proper means by, other persons who can obtain economic value
from its disclosure or use; and (b) Is the subject of efforts that are reasonable under
the circumstances to maintain its secrecy.”

- 1 written, recorded, graphic or electronic matters (and all
- 2 identical and non-identical copies thereof);
- 3 (b) any copies, notes, abstracts or summaries of such information,
- 4 and the information itself; or
- 5 (c) any pleading, affidavit, declaration, brief, motion, transcript or
- 6 other writing containing such information.

7 Notwithstanding anything to the contrary in this Order, a producing party
8 may designate as "CONFIDENTIAL" any information or documents previously
9 transmitted or disclosed pursuant to a written agreement regarding the
10 confidentiality of such information or documents, or which is/are protected as
11 confidential or privileged by statute, rule, or regulation. Further, notwithstanding
12 anything to the contrary in this Order, any and all billing invoices or related
13 documents reflecting services performed by or on behalf of counsel may be
14 designated as "Confidential," regardless of when or under what circumstances the
15 documents were disclosed.

16 4. Only non-public documents and documents not previously in the
17 possession of the receiving party may be designated as "Confidential."
18 Accordingly, "CONFIDENTIAL" materials shall not include any documents
19 concerning information that at any time has been: (a) produced, disclosed or made
20 available to the receiving party, the public or otherwise available for public access;
21 or (b) disclosed in connection with any governmental public filing which could not
22 reasonably be assumed to be or have been intended to be kept confidential. Any
23 document concerning information that has not been preserved or maintained in a
24 manner calculated to preserve its confidentiality shall not be designated as
25 "Confidential."

26 5. Any documents, material or information to be designated
27 "CONFIDENTIAL" pursuant to this Order may be so designated by stamping or
28 otherwise affixing on the documents, material or information the legend

1 "CONFIDENTIAL" prior to their production. Documents or things which cannot
2 be reasonably labeled pursuant to this paragraph should be so designated by the
3 producing party by informing the receiving party in writing. Confidential
4 information consisting of a multi-page document must contain the required legend
5 on every page designated as confidential. In the case of a deposition transcript,
6 transcript of a court or other related proceeding, an admission, interrogatory
7 answer, or other discovery response, the required legend shall be stamped or
8 affixed immediately preceding the portion of such matter as is being designated
9 confidential.

10 6. If material originally produced without the required legend is
11 subsequently designated as confidential by any party, including the party who
12 originally produced the material, the designating party shall provide all parties with
13 a copy of that material bearing the required legend. Upon receipt of the copy of
14 the material bearing the legend, the receiving party shall: (a) affix the required
15 legend to each page of the previously non-designated copies in its possession; or
16 (b) make reasonable arrangements to ensure the confidentiality of all non-
17 designated copies (including any electronic copies) in its possession.

18 7. All documents produced prior to the date of this Protective Order will
19 not be considered confidential **unless previously provided to a party pursuant to**
20 **a written confidentiality agreement with the recipient or which is/are**
21 **protected as confidential or privileged by court order, statute, rule, or**
22 **regulation**, regardless of whether these documents are stamped
23 "CONFIDENTIAL" when produced.

24 8. Nothing herein shall require defendants to destroy or alter documents,
25 whether in electronic or hardcopy format, in their claim files, underwriting files, or
26 other files or records they maintain and/or are required to maintain in the course of
27 business.

28

1 9. Any party may, within a reasonable time, object to any other party's
2 designation of information as "CONFIDENTIAL" under this Order as follows: 1)
3 in depositions or court proceedings by stating such objection on the record on the
4 record; or 2) in a writing served on all parties that that specifies the designation
5 objected to and the basis therefore. It shall be the burden of the party designating
6 testimony, documents or information as "CONFIDENTIAL" under this Order to
7 demonstrate to the Court's satisfaction the propriety of that party's designations.

8 10. If counsel for the party receiving documents, material, or information
9 designated as "CONFIDENTIAL" (the "receiving party") objects to such
10 designation of any or all of such items, counsel shall within a reasonable time after
11 receipt, advise the party producing the items (the "producing party") of such
12 objections and the reasons therefore. All of the items shall be treated as
13 "CONFIDENTIAL" pending a resolution of the parties' dispute. It shall be the
14 burden of the producing party to demonstrate to the Court's satisfaction the
15 propriety of the "CONFIDENTIAL" designation. The producing party must file a
16 motion with the Court not later than 21 days after receiving notice of the objection
17 as set forth in paragraph 9, unless otherwise agreed by the parties, and the material
18 designated as "CONFIDENTIAL" shall be treated as confidential until the Court
19 rules on the motion. If the producing party does not file a motion within 21 days,
20 or within a longer time period if mutually agreed by the parties, the material
21 previously designated as "CONFIDENTIAL" shall be deemed no longer to be
22 confidential.

23 11. If any party wishes to use or inquire at any deposition concerning
24 documents, material, or information designated as "CONFIDENTIAL" the portion
25 of the deposition transcript that relates to such documents, material, or information
26 shall be designated and treated as "CONFIDENTIAL" and subject to this Order.
27 Further, any party may designate any additional portion of deposition testimony in
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1 this Case "CONFIDENTIAL" no later than fifteen (15) days after receipt of the
2 deposition transcript, subject to the provisions of paragraphs 4 and 5, above.

3 12. Documents or material (including portions of deposition transcripts)
4 designated as "CONFIDENTIAL" or information derived solely therefrom, may
5 only be disclosed or made available by the party receiving such information to
6 "Qualified Persons," who, in the case of documents, material or information
7 designated as "CONFIDENTIAL" are defined to consist solely of:

- 8 (a) The Court and any trier or finder of fact, such as the members
9 of a jury impaneled in this action (at any trial or oral hearing
10 and in the manner provided by paragraph 15 hereof);
- 11 (b) Counsel (including "in-house" counsel) for the parties in this
12 Case and the paralegal, clerical (including data entry and IT
13 personnel) and secretarial staff employed by such counsel;
- 14 (c) Court reporters, videographers or similar personnel;
- 15 (d) Any party's witness during the course of that witness'
16 deposition or testimony in court;
- 17 (e) Experts and/or advisors consulted by the parties or their counsel
18 in connection with this Case, whether or not retained to testify
19 at trial; provided that prior to any such disclosure counsel for
20 the party making the disclosure shall deliver a copy of this
21 Protective Order to the expert and/or advisor, shall explain its
22 terms to the expert and/or advisor, and shall secure the
23 signature of the expert and/or advisor on a letter in the form
24 attached hereto as Exhibit A;
- 25 (f) Corporate representatives selected by the corporate parties to
26 this litigation;
- 27 (g) Agents, reinsurers, regulators and auditors; and
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1 (h) Any other person as to whom the producing party agrees in
2 writing prior to disclosure.

3 13. Documents and materials designated as "CONFIDENTIAL" and
4 information derived solely therefrom shall be used by the parties and their counsel
5 only for the purposes of preparing for and acting in this Case. Documents and
6 materials designated as "CONFIDENTIAL" and information derived solely
7 therefrom shall not be used by the parties or their counsel except as expressly
8 permitted herein. Moreover, any document containing summary or recitation of
9 any part of the content of a "CONFIDENTIAL" document or of confidential
10 information also shall be deemed to be a "CONFIDENTIAL" document and have
11 the required legend affixed to it, and subject to all of the protections and
12 restrictions in this Protective Order.

13 14. No copies shall be made of any "CONFIDENTIAL" document except
14 as deemed reasonably necessary in this Case. Counsel for each party shall take
15 such steps as they reasonably believe are appropriate to advise those persons
16 employed or retained in clerical, stenographic or ministerial functions of the
17 restrictions upon dissemination of "CONFIDENTIAL" documents provided by this
18 Protective Order.

19 15. Nothing herein shall impose any restrictions on the use or disclosure
20 by a party or witness of documents or information obtained lawfully by such party
21 or witness independently of the discovery proceedings in this Case, or from a
22 source independent of the producing party, whether or not such documents or
23 information are also obtained from the producing party through discovery in this
24 Case, except as stated in paragraph 3 above.

25 16. Nothing contained herein shall constitute a waiver of or otherwise
26 restrict a party's right to propound discovery or object to discovery of or use of any
27 documents or information in this Case. Nothing contained herein shall constitute a
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1 waiver by a receiving party of the right to object to the designation of documents,
2 materials, or information as "CONFIDENTIAL."

3 17. Nothing contained herein shall constitute a waiver of any previously
4 made objections to production requests, including objections based on relevancy,
5 privacy, and/or proprietary information. Nothing contained herein shall obligate
6 any party to produce any documents or disclose any information withheld subject
7 to any valid objection.

8 18. A Party that seeks to file under seal any documents and material
9 designated as "CONFIDENTIAL" must comply with Civil Local Rule 5.3(c) and
10 this Court's Standing Orders. In lieu of this procedure, the designating and filing
11 parties may agree to file a redacted version of the documents or material
12 designated as "CONFIDENTIAL".

13 19. All Court orders will be presumptively available to the public.
14 Therefore, if a party files any evidence, motion or other papers under seal pursuant
15 to this Protective Order, all papers that refer to or rely upon such evidence shall
16 designate the particular aspects that are confidential. By so designating, the parties
17 will enable the Court, in drafting orders, to determine whether there is evidence
18 which the Court should attempt not to disclose. Absent such advance notification,
19 the Court will be free to incorporate all such evidence in its written and oral
20 rulings.

21 20. If any party wishes to use documents and materials designated as
22 "CONFIDENTIAL" at Trial, any such documents and materials that were
23 designated as "CONFIDENTIAL" and/or kept and maintained pursuant to the
24 terms of this Protective Order will become public and will be presumptively
25 available to all members of the public, including the press, unless sufficient cause
26 is shown in advance of trial to proceed otherwise.

27 21. Each non-lawyer given access to documents, material or information
28 designated "CONFIDENTIAL" pursuant to the terms hereof shall be advised that

1 the documents, material, or information are being disclosed pursuant to and
2 subject to the terms of this Protective Order and may not be disclosed other than
3 pursuant to the terms hereof.

4 22. Complying with the terms of this Protective Order shall not:

5 (a) operate as an admission by any party that any particular
6 documents, material, or information contain or reflect currently
7 valuable proprietary or commercial information; or

8 (b) prejudice in any way the right of a party at any time:

9 (i) to seek a determination by the Court of whether any
10 particular documents, item of material, or piece of
11 information should be subject to the terms of this
12 Protective Order;

13 (ii) to seek modifications of this Protective Order;

14 (iii) to present a motion to the Court for a separate protective
15 order as to any particular document or information,
16 including restrictions differing from those as specified
17 herein; or

18 (iv) to seek relief on appropriate notice from any
19 provision(s) of this Protective Order, either generally or
20 as to any particular documents, item of material, or piece
21 of information.

22 21. Upon termination of the above-captioned Case (i.e., after final
23 judgment is entered and all appeal periods have expired or appeals been finally
24 decided, or after final resolution of the Case by settlement), or at any time
25 thereafter, the receiving party shall make all reasonable efforts to ensure that all
26 such documents and/or information will remain subject to the terms of this
27 Protective Order. The prohibitions of this Protective Order which restrict the
28 disclosure and use of "CONFIDENTIAL" materials shall continue to be binding

1 upon a party and the party's outside counsel to the extent that the party (and/or the
2 party's outside counsel) retains any such "CONFIDENTIAL" documents or
3 materials and and/or copies thereof. The Court shall retain jurisdiction following
4 the resolution of the Case to enforce the terms of this Protective Order.

5 22. All documents, material, and information designated as
6 "CONFIDENTIAL" may only be used by the parties to this Case, and Qualified
7 Persons, subject to the rights of any party to raise any other objections to the use of
8 such discovery material.

9 23. Nothing contained herein will limit the parties' use of non-
10 confidential documents in conjunction with this litigation. No party will have any
11 liability for non-confidential documents that may have been produced to third
12 parties, even if those documents are subsequently designated as
13 "CONFIDENTIAL" pursuant to this Protective Order.

14 24. It is the intent of the Parties that production by any Party of any
15 information, including electronically stored information, during discovery in this
16 action shall be without prejudice to claim that such material was inadvertently
17 produced and is protected by the attorney-client privilege or work product
18 doctrine, and no party shall be held to have waived any rights by such inadvertent
19 production. If information produced in discovery is subject to a claim of
20 privilege, the parties shall comply with Rule 26(b)(5)(B) of the Federal Rules of
21 Civil Procedure.

22 25. This Order shall not in any way prejudice the rights of any party to
23 object to the admissibility at trial of any information produced during discovery in
24 this action.

25 26. The Court is not bound by the terms of this Protective Order.

26 27. This Protective Order may be modified by subsequent Order of the
27 Court, and the parties may seek such modification.

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EXHIBIT A

**LIMITED SPECIAL APPEARANCE AND AGREEMENT
FOR ACCESS TO CONFIDENTIAL DOCUMENTS AND INFORMATION**

I hereby acknowledge and affirm that I have read the terms and conditions of the Protective Order entered by the Court in the above-captioned Proceeding on the _____ day of _____. I understand the terms of the Court's Order and under oath consent to be bound by the terms of the Court's Order as a condition to being provided access to confidential documents and information furnished by _____. By executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court for the special and limited purpose of enforcing the terms of the Court's Protective Order.

I hereby declare under the penalty of perjury under the laws of the United States of America that the above statements are true and correct.

Dated: _____ By: _____
Name: _____
Title: _____
Affiliation: _____
Address: _____