

1 Nossaman LLP
 Terry C. Leuin (CA 105968)
 2 Joan M. Cotkin (CA 70665)
 NOSSAMAN LLP
 3 445 S. Figueroa Street, 31st Floor
 Los Angeles, CA 90071
 4 Telephone: 213.612.7800
 Facsimile: 213.612.7801
 5 Email: tleuin@nossaman.com

Note: Changes have been made to
 this document (signature page)

6 Attorneys for Plaintiff
 HYUNDAI MOTOR AMERICA
 7

8
 9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11

12 HYUNDAI MOTOR AMERICA,

Case No: SACV 08-000020 JVS (RNBx)

13 Plaintiff,

14 vs.

STIPULATION AND PROTECTIVE
 ORDER REGARDING HYUNDAI'S
 PRODUCTION OF LEGAL BILLS AND
 WORK PRODUCT FROM THE *ORION*
 LITIGATION; ORDER THEREON

15 NATIONAL UNION FIRE INSURANCE
 COMPANY OF PITTSBURGH, PA AND
 16 AMERICAN HOME ASSURANCE
 COMPANY,

17 Defendants.
 18

19
 20 1. The parties to this Stipulation and Order are Hyundai Motor America
 21 (“Hyundai”), on the one hand, and National Union Fire Insurance Company of
 22 Pittsburgh, Pa and American Home Assurance Company (“the Insurers”), on the other
 23 hand.

24 2. This Stipulation and Order applies to any production of copies of statements
 25 for professional legal services and other expenses, including without limitation, invoices
 26 from law firms, deposition costs, court reporter costs, transcript fees, expert and
 27 consultant fees, and evidence of Hyundai’s payment of such statements and expenses
 28 (collectively referred to as “Legal Bills”) rendered for Hyundai, and, to the extent

1 requested and produced, discovery, communications, and analysis (other than documents
2 filed with the Court or disclosed to third parties) (collectively referred to as “Work
3 Product”) generated in connection with the defense of Hyundai, including the appeal, in
4 the underlying case of *Orion IP, LLC, v. Hyundai Motor America, et al.*, United States
5 District Court, Eastern District of Texas, Tyler Division, Case No. 6:05-CV322-LED
6 (“the *Orion* action”).

7 3. Whereas, the Ninth Circuit Court of Appeals found the Insurers have a duty
8 to defend Hyundai in the *Orion* action (*see Hyundai Motor America v. National Union*
9 *Fire Ins. Co. of Pittsburgh, PA*, 600 F.3d 1092 (9th Cir. 2010)).

10 4. Whereas, in response to the findings of the Ninth Circuit, and in support of
11 Hyundai’s claim for damages, the Insurers seek to review all of the Legal Bills incurred
12 to date.

13 5. Whereas, in connection with Hyundai’s claim for damages, the Insurers may
14 also seek to review Work Product generated in connection with defense of the claims
15 against Hyundai.

16 6. Whereas, such Legal Bills and Work Product may contain entries that are
17 subject to the attorney client and/or attorney work product privileges.

18 7. Whereas, Hyundai is prepared to provide the Insurers with copies of the
19 Legal Bills and may provide Work Product, to the extent requested by the Insurers, but
20 because Hyundai is adverse to the Insurers in this lawsuit, Hyundai does not want any
21 production of the Legal Bills and/or Work Product to waive any applicable privileges,
22 including without limitation, the attorney client or the attorney work product privileges.

23 IT IS HEREBY STIPULATED, AGREED AND ORDERED that the following
24 protective provisions shall govern any discovery conducted by the parties to this action:

25 8. The Insurers, and their counsel, hereby agree that any production by
26 Hyundai to the Insurers of the Legal Bills and/or Work Product will not waive any
27 applicable privilege, including without limitation the attorney-client and/or the attorney
28 work product privileges, regarding the Legal Bills and Work Product.

1 00020 JVS(RNBx), pending in the United States District
2 Court, Central District of California. I have read this
3 Protective Order and agree to be bound by its terms with
4 respect to the handling, use and disclosure of such Legal
5 Bills and/or Work Product. I further agree and attest to
6 my understanding that, in the event that I fail to abide by
7 the terms of the Protective Order, I may be subject to
8 sanctions, including sanctions by way of contempt of
9 court, imposed by the Court for such failure. In
10 consideration for me being allowed access to such
11 information and documents in connection with this
litigation, I further agree to be contractually bound by the
terms of the Protective Order and I agree and attest to my
understanding that, in the event that I fail to abide by the
terms of the Protective Order, I may be subject to financial
liability for any loss or damage caused on account thereof.

12 The foregoing provisions do not apply to the Court or any other court personnel, and the
13 Court and any other court personnel need not sign the Agreement of Confidentiality.

14 12. Anything in this Order to the contrary notwithstanding, any party may use
15 the services of a photocopying service or computer input service with regard to the Legal
16 Bills and any Work Product produced, provided that such services are advised of the
17 confidential nature of the documents and agree to maintain the confidentiality of the
18 Legal Bills and Work Product.

19 13. If deposition testimony concerning Legal Bills and/or Work Product is
20 requested or elicited, such testimony and the transcript of such testimony (whether
21 stenographic, audio, video or other form) shall be subject to this Order, and any court
22 reporter or transcriber who reports or transcribes testimony in this action shall agree that
23 all Legal Bills and/or Work Product shall remain confidential and shall not be disclosed
24 by them, except pursuant to the terms of this Order, and that any notes or transcriptions of
25 such testimony (and any accompanying exhibits) will be retained by the reporter or
26 delivered to counsel of record.

27 ///

28 ///

1 14. If a witness in a deposition is shown the Legal Bills and/or Work Product,
2 the witness shall be admonished that such materials are confidential and may not be
3 further disclosed or disseminated to any third person.

4 15. Should a party wish to file with the Court under seal any Legal Bills and/or
5 Work Product, and/or any pleadings, motions or other papers disclosing any such Legal
6 Bills and/or Work Product, the proposed filing shall be accompanied by a written
7 application to file any such Legal Bills and/or Work Product, and/or any pleadings,
8 motions or other papers disclosing any such Legal Bills and/or Work Product, under seal.
9 The filing and application shall be directed to the judge or judicial official to whose
10 attention the filing is submitted, pursuant to Local Rule 79-5.1. Should the application be
11 granted, all Legal Bills and Work Product filed with the Court, and any pleadings,
12 motions or other papers filed with the Court disclosing any Legal Bills and/or Work
13 Product shall be filed under seal and kept under seal until further ordered by the Court.
14 At the time of filing or any time thereafter, such material shall be placed in a sealed
15 envelope, which shall be marked with the title of the action and shall state the following:
16 “THIS ENVELOPE CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO
17 PROTECTIVE ORDER.” The envelope shall also show: the filing date of the court
18 order authorizing the sealing, and the name, address and telephone number of the person
19 filing the documents. The party filing the documents under seal shall include a copy of
20 the order in the envelope.

21 16. Any Legal Bills or Work Product designated by any party to be introduced at
22 trial or as part of the record on appeal may be offered into evidence in open court unless
23 Hyundai or any other party obtains an appropriate protective order from this Court or the
24 appellate court. Any party hereto must be given notice and a sufficient opportunity to
25 seek such a protective order.

26 17. Within thirty (30) days of conclusion of this case, including all appeals, all
27 Legal Bills and any Work Product Hyundai produces, and all copies thereof, shall at the
28 request of any party be destroyed, except that counsel shall be entitled to retain all

1 materials which constitute work product and such memoranda and pleadings embodying
2 the Legal Bills and Work Product to the extent necessary to preserve a file in this case, so
3 long as such materials are maintained in accordance with the provisions hereof. All
4 Legal Bills and Work Product disclosed to any person or party pursuant to any provision
5 herein and all deposition transcripts and exhibits and any other materials returned to the
6 parties by the Court shall also, if practicable, be destroyed as set forth above.

7 18. If a party in possession of Legal Bills or Work Product receives a subpoena
8 or other request seeking production or other disclosure of Legal Bills and/or Work
9 Product, that party shall immediately give written notice to counsel to all parties to this
10 litigation, stating the nature and type of Legal Bills and/or Work Product that has been
11 sought and the date and time proposed for production or disclosure of the material. Any
12 party objecting to the production or disclosure shall have the obligation to take timely
13 action in the appropriate court or courts. In the event that such action is taken (e.g., a
14 motion is filed), no Legal Bills or Work Product shall be produced or disclosed without
15 written approval by counsel of the objecting party or by further order of the appropriate
16 court(s). Nothing in this Order shall be construed as authorizing a party to disobey a
17 lawful subpoena issued in another action.

18 19. In addition to any other remedies set forth herein, any party violating this
19 Order and thereby causing damage to the interests of any other party hereto may be liable
20 to such party for all damages so caused.

21 20. Nothing contained in this Order shall prejudice in any way or waive in any
22 respect the right of any party hereto to assert any privilege as to any documents.

23 21. This Order shall be binding upon the parties and their attorneys.

24 22. Nothing contained in this Order shall prejudice in any way the right of any
25 party to seek, by way of consent of all parties or by motion to the Court,

26 ///

27 ///

28 ///

- 1 a) Additional protection for specific items of the Legal Bills or Work
2 Product; or
3 b) Relief from the provisions of this Order with respect to specific items
4 or categories of Legal Bills or Work Product. Moreover, if a party
5 does not comply with the terms of this Order, the complaining party
6 may petition the Court for sanctions, or other appropriate relief.

7 Notwithstanding the foregoing, no modification of this Order by the parties shall have
8 any force or effect unless the Court approves the modification.

9 23. Pursuant to the Federal Rules of Civil Procedure, if information produced in
10 discovery is subject to a claim of privilege or of protection as trial-preparation material,
11 the party making the claim may notify the receiving party, including the basis for the
12 claim. After being notified, the receiving party must promptly return, sequester, or
13 destroy the specified information and any copies it has; must not use or disclose the
14 information until the claim is resolved; must take reasonable steps to retrieve the
15 information if the party disclosed it before being notified; and may promptly present the
16 information to the court under seal for a determination of the claim. The producing party
17 must preserve the information until the claim is resolved.

18 24. This Protective Order is entered solely for the purpose of facilitating the
19 exchange of documents and information between the parties to this action without
20 involving the Court unnecessarily in the process. Nothing in this Order nor the
21 production of any information or document under the terms of this Order nor any
22 proceedings pursuant to this Order shall be deemed to have the effect of waiver of the
23 attorney client or attorney work product privileges.

24 25. This Order shall survive the final termination of this action to the extent that
25 the information contained in Legal Bills or any Work Product Hyundai produces is not or
26 does not become known to the public, and the Court shall retain jurisdiction to resolve
27 any dispute concerning the use of information disclosed hereunder.

28 ///

1 26. The parties further stipulate that the parties to this litigation may use the
2 Legal Bills and any Work Product Hyundai produces in this case, subject to terms of this
3 Stipulation and Protective order, the rules of evidence and rulings by the Court.

4 27. The parties, by and through the signatures of their respective counsel,
5 consent to the entry of this Stipulated Order by the Court.

6
7 IT IS SO ORDERED

8
9 Entered this 24th day of August 2010



10
11
12 _____
13 Hon. Robert N. Block
14 United States Magistrate Judge

15 AGREED TO BY:

16 DATED: August____, 2010

17 NOSSAMAN LLP

18 By _____
19 Terry C. Leuin
20 Attorneys for Plaintiff
21 HYUNDAI MOTOR AMERICA

22 DATED: August____, 2010

23 BATES & CAREY LLP

24 By _____
25 Richard H. Nicolaides, Jr.
26 Attorneys for Defendants,
27 NATIONAL UNION INSURANCE
28 COMPANY OF PITTSBURGH, PA and
AMERICAN HOME ASSURANCE
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

DATED: August____, 2010

GORDON & REES LLP

By_____

Sara M. Thorpe
Attorneys for Defendants,
NATIONAL UNION INSURANCE
COMPANY OF PITTSBURGH, PA and
AMERICAN HOME ASSURANCE
COMPANY