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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION
10

11 ST. PAUL FIRE AND MARINE
INSURANCE COMPANY,
12
Plaintiff,
13
KINSALE INSURANCE COMPANY,
14
Defendant.
15

Case No. 1:20-cv-00967-JLT-BAK
(BAM)
Consolidated With Case No. 1:20-cv-
01085-NONE-JLT

**~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER**

Hon. Jennifer L. Thurston

16
17 NEW YORK MARINE AND
GENERAL INSURANCE COMPANY,
a Delaware corporation,
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Plaintiff,
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v.
20
KINSALE INSURANCE COMPANY,
21
an Arkansas corporation,
22
Defendant.
23

Complaint Filed: August 5, 2020
Trial Date: None

[Concurrently Filed With Stipulation To
Lift Stay For Limited Purpose Of
Obtaining A Protective Order;
Declaration of James P. Wagoner]

24 TRC OPERATING COMPANY, INC.,
a California corporation, TRC
CYPRESS GROUP, LLC, a California
25 Limited Liability Company,
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Real PARTIES in Interest.
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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff St. Paul Fire and Marine Insurance Company (“St. Paul”) in case no. 1:20-cv-00967-NONE-JLT, Plaintiff New York Marine and General Insurance Company (“New York Marine”) in case no. 1:20-cv-01085-NONE-JLT, Defendant Kinsale Insurance Company (“Kinsale”) in case nos. 1:20-cv-00967-NONE-JLT and 1:20-cv-01085-NONE-JLT, and Real Parties in Interest TRC Operating Company, Inc. and TRC Cypress Group, LLC (collectively referred to as the “TRC Entities”) in case no. 1:20-cv-01085-NONE-JLT (St. Paul, New York Marine, Kinsale and the TRC Entities are collectively referred to as the “PARTIES”), through their undersigned counsel, jointly submit this Stipulated Protective Order (“PROTECTIVE ORDER”) to govern the handling of information and materials produced in the course of discovery or filed with the Court in advance of trial in this ACTION.

I. PURPOSES AND LIMITATIONS

DISCLOSURE and discovery activity in this ACTION are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the PARTIES to this ACTION hereby stipulate to and petition the Court to enter the following PROTECTIVE ORDER.

The PARTIES acknowledge that this PROTECTIVE ORDER does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under established legal principles. The PARTIES further acknowledge, as set forth in Section 12.3, below, that this PROTECTIVE ORDER does not automatically entitle them to file confidential information under seal; rather Eastern District Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a

1 PARTY seeks permission from the Court to file material under seal.

2 Nothing in this PROTECTIVE ORDER shall be deemed an admission by any
3 PARTY that certain categories or types of DOCUMENTS or information contain
4 proprietary or confidential information. Each PARTY retains the right to challenge
5 any and all information designated “CONFIDENTIAL,” as defined in Paragraph 3.3
6 below, through the procedures detailed in this PROTECTIVE ORDER. Nothing in
7 this PROTECTIVE ORDER shall be deemed a waiver of any such rights.

8 THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND JOINTLY
9 REQUESTED by and between the PARTIES to *St. Paul Fire and Marine Ins. Co. v.*
10 *Kinsale Ins. Co.* (Case No. 1:20-cv-00967-NONE-JLT) and *New York Marine and*
11 *General Ins. Co. v. Kinsale Ins. Co.* (Case No. 1:20-cv-01085-NONE-JLT), which
12 are consolidated as of February 2, 2021 (Dkt. No. 12), with the scheduling order
13 issued in Case No. 1:20-cv-01085 NONE JLT controlling the consolidated action,
14 by and through their respective counsel of record, that this COURT enter this
15 PROTECTIVE ORDER to govern the proceedings in this ACTION for good cause
16 shown and according to the following terms and provisions.

17 **II. GOOD CAUSE STATEMENT PURSUANT TO L.R. 141.1(C)**

18 This ACTION is likely to involve CONFIDENTIAL and proprietary business
19 and commercial information and trade secrets of the PARTIES, as well as sensitive
20 and private information about PARTIES and NON-PARTIES for which special
21 protection from public disclosure and from use for any purpose other than
22 prosecution and defense of this ACTION is warranted. Such CONFIDENTIAL and
23 proprietary materials and information consist of, among other things,
24 CONFIDENTIAL business or financial information; information regarding
25 CONFIDENTIAL business practices; other CONFIDENTIAL research,
26 development, or commercial information (including information implicating privacy
27 rights of third PARTIES); information otherwise generally unavailable to the public;
28 and information that may be otherwise protected from DISCLOSURE under state or

1 federal statutes, court rules, case decisions, or common law.

2 Accordingly, to expedite the flow of information, to facilitate the prompt
3 resolution of disputes over confidentiality of discovery materials, to adequately
4 protect information the PARTIES are entitled to keep CONFIDENTIAL, to ensure
5 that the PARTIES are permitted reasonable necessary use of such material in
6 preparation for and in the conduct of proceedings in this ACTION, to address their
7 handling at the end of the litigation, and to serve the ends of justice, a protective
8 order for such information is justified in this matter. It is the intent of the PARTIES
9 that information will not be designated as CONFIDENTIAL for tactical reasons and
10 that nothing be so designated without a good-faith belief that it has been maintained
11 in a CONFIDENTIAL, nonpublic manner, and there is good cause why it should not
12 be part of the public record of this case.

13 **Statement Under L.R. 141.1(c)(1):** Examples of CONFIDENTIAL
14 information that the PARTIES may seek to protect from unrestricted or unprotected
15 DISCLOSURE include:

- 16 a) Information that is the subject of a non-disclosure or confidentiality
17 agreement or obligation or subject to the mediation or settlement
18 privileges;
- 19 b) Agreements with third-parties, including liability coverage agreements,
20 reservation of rights letters, underwriting information, insurance
21 contracts and financial information (such as premium, rating
22 information, and rating basis (e.g. gross sales), which may be set forth
23 in insurance contracts);
- 24 c) Information related to claims administration and management,
25 including but not limited to costs, margins, or other internal
26 financial/accounting information, including non-public information
27 related to financial condition or performance and income or other non-
28 public tax information; and

- 1 d) Information related to past, current, and future market analyses and
2 business and marketing development, including plans, strategies,
3 forecasts and competition.
- 4 e) All documents, materials and testimony marked confidential in the in
5 the underlying litigation *TRC Operating Company, Inc. v. Chevron*
6 *U.S.A., Inc.*, Superior Court of the State of California, County of Kern,
7 Case No.: S-1500-CV-282520-DRL.
- 8 f) The TRC Entities' trade secrets, business and financial information.

9 **Statement Under L.R. 141.1(c)(2):** Generally speaking, information and
10 DOCUMENTS shall only be designated under this PROTECTIVE ORDER because
11 the DESIGNATING PARTY believes the information or DOCUMENTS are
12 proprietary and/or CONFIDENTIAL that the DESIGNATING PARTY would not
13 release publicly. Unrestricted or unprotected disclosure of such CONFIDENTIAL
14 or commercial information would result in prejudice or harm to the PRODUCING
15 PARTY by revealing the PRODUCING PARTY's methods for items such as
16 insurance claims administration and claims management, marketing of insurance
17 products, methodology for underwriting insurance risks, actuarial information,
18 including risk factors, rating and pricing of insurance policies, and insurance
19 industry contacts. Such information will have been developed at the expense of the
20 PRODUCING PARTY and represent valuable tangible and intangible assets of that
21 PARTY. Additionally, privacy interests of Third Parties, such as financial
22 information, must be safeguarded. Accordingly, the PARTIES respectfully submit
23 that there is good cause for the entry of this PROTECTIVE ORDER.

24 **Statement Under L.R. 141.1(c)(3):** The PARTIES submit that protecting
25 the CONFIDENTIAL nature of information in this way will be most efficient for the
26 PARTIES and the COURT. DOCUMENTS likely sought in the instant litigation are
27 subject to a protective order in the underlying litigation *TRC Operating Company,*
28 *Inc. v. Chevron U.S.A., Inc.*, Superior Court of the State of California, County of

1 Kern, Case No.: S-1500-CV-282520-DRL. Additionally, the underlying litigation is
2 still pending and the production of DOCUMENTS may prejudice the defense of the
3 TRC Entities in that action. The PARTIES have met and conferred on this issue and
4 agree that any private agreement between the PARTIES to safeguard this
5 information will need to be replicated through orders of this COURT at the time of
6 filing dispositive or non-dispositive motions. The burden shall be on the PARTY
7 that designated information “CONFIDENTIAL” to take all steps necessary to
8 protect that information in information filed with the Court. However, the
9 PARTIES also agree that if a PARTY seeks to file information previously
10 designated as CONFIDENTIAL under seal and the Court does not deem the
11 information to be worthy of such protection, the PARTY may proceed with its filing
12 containing otherwise CONFIDENTIAL DOCUMENTS and information without an
13 Order sealing the record so long as (a) the PARTY has made a good faith effort to
14 obtain an Order sealing the record; and (b) the PARTY takes no further steps to
15 draw public attention to the Court filing of information formerly designated as
16 CONFIDENTIAL.

17 **III. DEFINITIONS**

18 In this PROTECTIVE ORDER, the words set forth below shall have the
19 following meanings:

20 3.1. “ACTION” or “PROCEEDING” means the above-entitled
21 proceeding, consolidated case no. 1:20-CV-00967-NONE-JLT.

22 3.2. “CHALLENGING PARTY” shall mean a PARTY or NON-
23 PARTY that challenges the designation of information or items under this
24 PROTECTIVE ORDER.

25 3.3. “CONFIDENTIAL” Information or Items means
26 DOCUMENTS, materials, depositions or other TESTIMONY, deposition exhibits,
27 interrogatory responses, responses to requests for admission, and other information
28 produced by the PARTIES or third parties in connection with this case that a

1 PARTY believes in good faith contains or comprises any proprietary, confidential,
2 or sensitive information that is related to research and development or is a trade
3 secret or is of a commercial, technical, financial, or personal nature or qualifies for
4 protection under Federal Rule of Civil Procedure 26(c)(1)(A-H).

5 3.4. "COUNSEL" shall mean OUTSIDE COUNSEL OF RECORD
6 and IN-HOUSE COUNSEL (each as defined herein), as well as their respective
7 support staff.

8 3.5. "COURT" shall mean the United States District Court, Eastern
9 District of California, Fresno Division.

10 3.6. "DESIGNATING PARTY" means the PARTY that designates
11 Materials as "CONFIDENTIAL."

12 3.7. "DISCLOSE" or "DISCLOSED" or "DISCLOSURE" means to
13 reveal, divulge, give, or make available Materials, or any part thereof, or any
14 information contained therein.

15 3.8. "DISCLOSURE OF DISCOVERY MATERIAL" means all
16 items or information, regardless of the medium or manner in which it is generated,
17 stored, or maintained (including, among other things, TESTIMONY, transcripts, and
18 tangible things), that are produced or generated in disclosures or responses to
19 discovery in this matter.

20 3.9. "DOCUMENTS" shall have the same meaning as the terms
21 "documents and electronically stored information" as used in Rule 34 of the Federal
22 Rules of Civil Procedure and include any "writing," "recording," "photograph,"
23 "original," or "duplicate," as those terms are defined by Federal Rule of Evidence
24 1001.

25 3.10. "EXPERT" shall mean a person with specialized knowledge or
26 experience in a matter pertinent to the litigation who has been retained by a PARTY
27 or its COUNSEL to serve as an expert witness or as a consultant in this ACTION.

28 3.11. "INFORMATION" means the content of DOCUMENTS or

1 TESTIMONY.

2 3.12. "IN-HOUSE COUNSEL" means attorneys who are employees
3 of a PARTY to this ACTION. IN-HOUSE COUNSEL does not include OUTSIDE
4 COUNSEL OF RECORD or any other outside counsel.

5 3.13. "NON-PARTY" or "NON-PARTIES" means any natural person,
6 partnership, corporation, association, or other legal entity not named as a PARTY to
7 this ACTION who/that agrees to be bound by this PROTECTIVE ORDER by
8 signing the "Acknowledgement and Agreement to Be Bound" that is attached to this
9 PROTECTIVE ORDER as Exhibit A.

10 3.14. "OUTSIDE COUNSEL OF RECORD" means attorneys who are
11 not employees of a PARTY to this ACTION but are retained to represent or advise a
12 PARTY to this ACTION and have appeared in this ACTION on behalf of that
13 PARTY or are affiliated with a law firm which has appeared on behalf of that
14 PARTY.

15 3.15. "PARTIES" shall mean Plaintiff New York Marine and General
16 Insurance Company ("New York Marine"), Plaintiff St. Paul Fire and Marine
17 Insurance Company ("St. Paul"), Defendant Kinsale Insurance Company
18 ("Kinsale"), and real PARTIES in interest TRC Operating Company, Inc. and TRC
19 Cypress Group, LLC (collectively "TRC Entities").

20 3.16. "PARTY" shall mean one of the aforementioned five PARTIES.

21 3.17. "PRODUCING PARTY" shall mean a PARTY or NON-PARTY
22 that produces INFORMATION or other discovery material in this ACTION.

23 3.18. "PROFESSIONAL VENDORS" means persons or entities that
24 provide litigation support services (e.g., photocopying, videotaping, translating,
25 preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
26 any form or medium) and their employees and subcontractors.

27 3.19. "PROTECTED MATERIAL" means any DISCLOSURE OF
28 DISCOVERY MATERIAL that is designated as "CONFIDENTIAL" that has not

1 had that designation removed according to the terms of this PROTECTIVE
2 ORDER.

3 3.20. “PROTECTIVE ORDER” means this Stipulated Protective
4 Order entered in the ACTION.

5 3.21. “RECEIVING PARTY” means a PARTY that receives
6 DISCLOSURE OF DISCOVERY MATERIAL from a PRODUCING PARTY.

7 3.22. “TESTIMONY” means all depositions, declarations or other
8 testimony taken or used in this PROCEEDING.

9 **IV. SCOPE AND DURATION**

10 **4.1 Scope.** The protections conferred by this Stipulation and
11 PROTECTIVE ORDER cover not only PROTECTED MATERIAL (as defined
12 above), but also (1) any INFORMATION copied or extracted from PROTECTED
13 MATERIAL; (2) all copies, excerpts, summaries, or compilations of PROTECTED
14 MATERIAL; and (3) any TESTIMONY, conversations, or presentations by
15 PARTIES or their COUNSEL that might reveal PROTECTED MATERIAL.
16 However, the protections conferred by this PROTECTIVE ORDER do not cover the
17 following INFORMATION: (a) any INFORMATION that is in the public domain at
18 the time of DISCLOSURE to a RECEIVING PARTY or becomes part of the public
19 domain after its DISCLOSURE to a RECEIVING PARTY as a result of publication
20 not involving a violation of this PROTECTIVE ORDER, including becoming part
21 of the public record through trial or otherwise; and (b) any INFORMATION known
22 to the RECEIVING PARTY prior to the DISCLOSURE or obtained by the
23 RECEIVING PARTY after the DISCLOSURE from a source who obtained the
24 INFORMATION lawfully and under no obligation of confidentiality to the
25 DESIGNATING PARTY. Any use of PROTECTED MATERIAL at trial shall be
26 governed by a separate agreement or order.

27 **4.2 Duration.** Even after final disposition of this litigation, the
28 confidentiality obligations imposed by this PROTECTIVE ORDER shall remain in

1 effect until a DESIGNATING PARTY agrees otherwise in writing or a court order
2 otherwise directs. Final disposition shall be deemed to be upon (1) dismissal of all
3 claims and defenses in this ACTION, with or without prejudice; or (2) final
4 judgment herein after the completion and exhaustion of all appeals, rehearings,
5 remands, trials, or reviews of this ACTION, including the time limits for filing any
6 motions or applications for extension of time pursuant to applicable law.

7 **V. DESIGNATING PROTECTED MATERIAL**

8 5.1 Manner and Timing of Designations. Except as otherwise provided in
9 this PROTECTIVE ORDER or as otherwise stipulated or ordered, DISCLOSURE
10 OF DISCOVERY MATERIAL that qualifies for protection under this
11 PROTECTIVE ORDER must be clearly so designated before the material is
12 DISCLOSED or produced.

13 Designation in conformity with this PROTECTIVE ORDER requires:

14 (a) for DOCUMENTS (e.g., paper or electronic DOCUMENTS, but
15 excluding transcripts of depositions or other pretrial or trial proceedings), that the
16 PRODUCING PARTY affix the legend “CONFIDENTIAL” to each page that
17 contains PROTECTED MATERIAL. If only a portion or portions of the material on
18 a page qualifies for protection, the PRODUCING PARTY also must clearly identify
19 the protected portion(s) (e.g., by making appropriate markings in the margins). A
20 PARTY or NON-PARTY that makes original materials available for inspection
21 need not designate them for protection until after the inspecting PARTY has
22 indicated which material it would like copied and produced. During the inspection
23 and before the designation, all of the material made available for inspection shall be
24 deemed “CONFIDENTIAL.” After the inspecting PARTY has identified the
25 materials it wants copied and produced, the PRODUCING PARTY must determine
26 which materials, or portions thereof, qualify for protection under this PROTECTIVE
27 ORDER. Then, before producing the specified materials, the PRODUCING PARTY
28 must affix the “CONFIDENTIAL” legend to each page that contains PROTECTED

1 MATERIAL. If only a portion or portions of the material on a page qualifies for
2 protection, the PRODUCING PARTY also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

4 (b) for TESTIMONY, that the DESIGNATING PARTY may either
5 identify on the record all protected TESTIMONY, or may invoke, on the record or
6 by written notice to all parties on or before the next business day, a right to have up
7 to twenty-one (21) days from the deposition, hearing or proceeding to make its
8 designation. The designation shall indicate the page and line numbers of any
9 transcript of material deemed to be CONFIDENTIAL.

10 (c) for INFORMATION produced in some form other than
11 documentary and for any other tangible items, that the PRODUCING PARTY affix
12 in a prominent place on the exterior of the container or containers in which the
13 INFORMATION or item is stored the legend “CONFIDENTIAL.” If only a portion
14 or portions of the INFORMATION or item warrant protection, the PRODUCING
15 PARTY, to the extent practicable, shall identify the protected portion(s).

16 (d) Parties shall give advance notice if they expect a deposition or
17 other proceeding to include PROTECTED MATERIAL so that the other PARTIES
18 can ensure that only authorized individuals are present at those proceedings when
19 such material is disclosed or used. The use of a DOCUMENT as an exhibit at a
20 deposition shall not in any way affect its designation. Transcripts containing
21 PROTECTED MATERIAL shall have a legend on the title page noting the presence
22 of PROTECTED MATERIAL, and the title page shall be followed by a list of all
23 pages (including line numbers as appropriate) that have been designated, and the
24 level of protection being asserted. The DESIGNATING PARTY shall inform the
25 court reporter of these requirements. Any transcript that is prepared before the
26 expiration of the twenty-one (21) day period for designation shall be treated during
27 that period as if it had been designated CONFIDENTIAL unless otherwise agreed.
28 After the expiration of the twenty-one (21) day period, the transcript shall be treated

1 only as actually designated.

2 5.2 Materials Subject to Designation. Each PARTY may designate any
3 DOCUMENT, thing, interrogatory answer, admission, deposition TESTIMONY,
4 and portions of such materials, or other INFORMATION which it has provided or
5 which a NON-PARTY has provided as “CONFIDENTIAL” in accordance with this
6 PROTECTIVE ORDER. In designating DOCUMENTS, TESTIMONY or
7 INFORMATION as “CONFIDENTIAL,” the DESIGNATING PARTY’s
8 COUNSEL shall make a good faith determination, before applying the designation,
9 that the DOCUMENTS, TESTIMONY or INFORMATION warrants protection
10 under Rule 26(c) of the Federal Rules of Civil Procedure.

11 5.3 Inadvertent Failure to Designate. If timely corrected, an inadvertent
12 failure to designate qualified INFORMATION or items does not, standing alone,
13 waive the DESIGNATING PARTY’s right to secure protection under this
14 PROTECTIVE ORDER for such material. If a DESIGNATING PARTY
15 inadvertently fails to designate material which, in good faith, might otherwise be
16 deemed CONFIDENTIAL, that DESIGNATING PARTY shall provide written
17 notice of such designation within a reasonable time of discovering the inadvertent
18 failure to so designate the material as CONFIDENTIAL. Any RECEIVING
19 PARTY who objects to the late designation must do so in writing within seven (7)
20 days of the late designation. In the absence of such an objection, the late
21 designation shall be deemed timely and treated as if made within the time(s) set
22 forth above. Upon timely assertion or correction of a designation, all recipients
23 must make reasonable efforts to ensure that the materials are treated according to
24 this PROTECTIVE ORDER.

25 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any PARTY or NON-PARTY may challenge a
27 designation of confidentiality at any time. Unless an immediate challenge to a
28 DESIGNATING PARTY’s confidentiality designation is necessary to avoid

1 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
2 disruption or delay of the litigation, a PARTY does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is DISCLOSED.

5 6.2 Meet and Confer. The CHALLENGING PARTY shall initiate the
6 dispute resolution process by providing written notice of each designation it is
7 challenging and describing the basis for each challenge. To avoid ambiguity as to
8 whether a challenge has been made, the written notice must recite that the challenge
9 to confidentiality is being made in accordance with this specific paragraph of the
10 PROTECTIVE ORDER. The PARTIES shall attempt to resolve each challenge in
11 good faith and must begin the process by conferring directly (in a verbal dialogue;
12 other forms of communication are not sufficient) within fourteen (14) days of the
13 date of service of notice. In conferring, the CHALLENGING PARTY must explain
14 the basis for its belief that the confidentiality designation was not proper and must
15 give the DESIGNATING PARTY an opportunity to review the designated material,
16 to reconsider the circumstances, and, if no change in designation is offered, to
17 explain the basis for the chosen designation. A CHALLENGING PARTY may
18 proceed to the next stage of the challenge process only if it has engaged in this meet
19 and confer process first or establishes that the DESIGNATING PARTY is unwilling
20 to participate in the meet and confer process in a timely manner.

21 6.3 Joint Statement. If the PARTIES cannot resolve a challenge without
22 court intervention, the CHALLENGING PARTY shall submit a challenge to the
23 COURT via joint stipulation pursuant to Local Rule 251(c). The burden of
24 persuasion in any such challenge proceeding shall be on the DESIGNATING
25 PARTY. Unless the DESIGNATING PARTY has expressly waived the
26 confidentiality designation, all PARTIES shall continue to afford the material in
27 question the level of protection to which it is entitled under the PRODUCING
28 PARTY's designation until the COURT rules on the challenge.

1 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 7.1 Basic Principles. A RECEIVING PARTY may use PROTECTED
3 MATERIAL that is DISCLOSED or produced by another PARTY or by a NON-
4 PARTY in connection with this case only for prosecuting, defending, or attempting
5 to settle this litigation. Such PROTECTED MATERIAL may be DISCLOSED only
6 to the categories of persons and under the conditions described in this
7 PROTECTIVE ORDER. When the litigation has been terminated, a RECEIVING
8 PARTY must comply with the provisions of section 12.4 below regarding final
9 disposition.

10 PROTECTED MATERIAL must be stored and maintained by a RECEIVING
11 PARTY at a location and in a secure manner that ensures that access is limited to the
12 persons authorized under this PROTECTIVE ORDER.

13 7.2 **DISCLOSURE of PROTECTED MATERIAL**. Unless otherwise
14 ordered by the COURT or permitted in writing by the DESIGNATING PARTY, a
15 RECEIVING PARTY may DISCLOSE any INFORMATION or item designated
16 “CONFIDENTIAL” only to:

17 (a) the RECEIVING PARTY’s OUTSIDE COUNSEL OF
18 RECORD, as well as employees of said OUTSIDE COUNSEL OF RECORD to
19 whom it is reasonably necessary to DISCLOSE the INFORMATION for this
20 ACTION;

21 (b) the officers, directors, and employees (including IN-HOUSE
22 COUNSEL) of the RECEIVING PARTY to whom DISCLOSURE is reasonably
23 necessary for this ACTION or who access the INFORMATION in the ordinary
24 course of business;

25 (c) EXPERTS (as defined in this PROTECTIVE ORDER) of the
26 RECEIVING PARTY to whom DISCLOSURE is reasonably necessary for this
27 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A);

1 (d) the COURT and its personnel;

2 (e) court reporters in this PROCEEDING, to whom DISCLOSURE
3 is reasonably necessary for this ACTION;

4 (f) professional jury or trial consultants, mock jurors, and
5 PROFESSIONAL VENDORS to whom DISCLOSURE is reasonably necessary for
6 this litigation and who have signed the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A);

8 (g) during their depositions, NON-PARTY witnesses in the
9 ACTION to whom DISCLOSURE is reasonably necessary and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
11 agreed by the DESIGNATING PARTY or ordered by the COURT. Pages of
12 transcribed deposition TESTIMONY or exhibits to depositions that reveal
13 PROTECTED MATERIAL must be separately bound by the court reporter and may
14 not be DISCLOSED to anyone except as permitted under this PROTECTIVE
15 ORDER;

16 (h) the author or recipient of a document containing the information
17 or a custodian or other person who otherwise possessed or knew the information
18 prior to its designation as CONFIDENTIAL;

19 (i) a PARTY’s auditors, regulators, or reinsurers in connection with
20 that PARTY’s regular business practices.

21 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
22 **PRODUCED IN OTHER LITIGATION**

23 8.1 If a PARTY is served with a subpoena or a court order issued in other
24 litigation that compels DISCLOSURE of any PROTECTED MATERIAL, that
25 PARTY must:

26 (a) promptly notify in writing the DESIGNATING PARTY. Such
27 notification shall include a copy of the subpoena or court order;

28 (b) promptly notify in writing the PARTY who caused the subpoena

1 or order to issue in the other litigation that some or all of the material covered by the
2 subpoena or order is subject to this PROTECTIVE ORDER. Such notification shall
3 include a copy of this PROTECTIVE ORDER; and

4 (c) cooperate with respect to all reasonable procedures sought to be
5 pursued by the DESIGNATING PARTY whose PROTECTED MATERIAL may be
6 affected.

7 8.2 If the DESIGNATING PARTY timely seeks a protective order, the
8 PARTY served with the subpoena or court order shall not produce PROTECTED
9 MATERIAL before a determination by the COURT from which the subpoena or
10 order issued, unless the PARTY has obtained the DESIGNATING PARTY's
11 permission. The DESIGNATING PARTY shall bear the burden and expense of
12 seeking protection in that court of its PROTECTED MATERIAL – and nothing in
13 these provisions should be construed as authorizing or encouraging a RECEIVING
14 PARTY in this ACTION to disobey a lawful directive from another court.

15 **IX. PROTECTED MATERIAL OF A NON-PARTY SOUGHT TO BE**
16 **PRODUCED IN THIS LITIGATION**

17 9.1 The terms of this PROTECTIVE ORDER are applicable to
18 DOCUMENTS, INFORMATION or TESTIMONY produced by a NON-PARTY
19 and designated as “CONFIDENTIAL.” Such DOCUMENTS, INFORMATION or
20 TESTIMONY are protected by the remedies and relief provided by this
21 PROTECTIVE ORDER. Nothing in these provisions should be construed as
22 prohibiting a NON-PARTY from seeking additional protections.

23 9.2 If a PARTY is required, by a valid discovery request, to produce a
24 NON-PARTY's CONFIDENTIAL DOCUMENTS, INFORMATION or
25 TESTIMONY in its possession, the PARTY shall:

26 (a) promptly notify in writing the REQUESTING PARTY and the
27 NON-PARTY that some or all of the DOCUMENTS, INFORMATION or
28 TESTIMONY requested are subject to a confidentiality agreement with a NON-

1 PARTY;

2 (b) promptly provide the NON-PARTY with a copy of the
3 PROTECTIVE ORDER in this ACTION, the relevant discovery request(s), and a
4 reasonably specific description of the DOCUMENTS, INFORMATION or
5 TESTIMONY requested; and

6 (c) make the DOCUMENTS, INFORMATION or TESTIMONY
7 requested available for inspection by the NON-PARTY.

8 9.3 If the NON-PARTY fails to object or seek a protective order from this
9 COURT within fourteen (14) days of receiving the notice and accompanying
10 DOCUMENTS, INFORMATION or TESTIMONY, the RECEIVING PARTY may
11 produce the NON-PARTY's CONFIDENTIAL DOCUMENTS, INFORMATION
12 or TESTIMONY responsive to the discovery request. If the NON-PARTY timely
13 seeks a protective order, the RECEIVING PARTY shall not produce any
14 information in its possession or control that is subject to the confidentiality
15 agreement with the NON-PARTY before a determination by the COURT. Absent a
16 court order to the contrary, the NON-PARTY shall bear the burden and expense of
17 seeking protection in this COURT of its PROTECTED MATERIAL.

18 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a RECEIVING PARTY learns that, by inadvertence or otherwise, it has
20 DISCLOSED PROTECTED MATERIAL to any person or in any circumstance not
21 authorized under this PROTECTIVE ORDER, the RECEIVING PARTY must
22 immediately (a) notify in writing the PRODUCING PARTY and the
23 DESIGNATING PARTY (if not the same party) of the unauthorized disclosures, (b)
24 use its best efforts to retrieve all unauthorized copies of the PROTECTED
25 MATERIAL, (c) inform the person or persons to whom unauthorized
26 DISCLOSURES were made of all the terms of this PROTECTIVE ORDER, and (d)
27 request such person or persons to execute the "Acknowledgment and Agreement to
28 Be Bound" that is attached hereto as Exhibit A.

1 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a PRODUCING PARTY gives notice to RECEIVING PARTIES that
4 certain inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the RECEIVING PARTIES are those set forth in
6 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
7 modify whatever procedure may be established in an e-discovery order that provides
8 for production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the PARTIES reach an agreement on the effect of
10 DISCLOSURE of a communication or information covered by the attorney-client
11 privilege or work product protection, the PARTIES may incorporate their agreement
12 in the stipulated protective order submitted to the COURT.

13 **XII. MISCELLANEOUS**

14 12.1 Right to Further Relief. Nothing in this PROTECTIVE ORDER
15 abridges the right of any person to seek its modification by the COURT in the
16 future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 PROTECTIVE ORDER no PARTY waives any right it otherwise would have to
19 object to disclosing or producing any information or item on any ground not
20 addressed in this PROTECTIVE ORDER. Similarly, no PARTY waives any right to
21 object on any ground to use in evidence of any of the material covered by this
22 PROTECTIVE ORDER.

23 12.3 Filing PROTECTED MATERIAL. Without written permission from
24 the DESIGNATING PARTY or a court order secured after appropriate notice to all
25 interested persons, a PARTY may not file in the public record in this ACTION any
26 PROTECTED MATERIAL. A PARTY that seeks to file under seal any
27 PROTECTED MATERIAL must follow the procedure set forth in Local Rule 141.
28 PROTECTED MATERIAL may only be filed under seal pursuant to a court order

1 authorizing the sealing of the specific PROTECTED MATERIAL at issue. The fact
2 that a document has been designated under this PROTECTIVE ORDER is
3 insufficient to justify filing under seal. Instead, PARTIES must explain the basis for
4 confidentiality of each document sought to be filed under seal. Because a PARTY
5 other than the DESIGNATING PARTY will often be seeking to file PROTECTED
6 MATERIAL, cooperation among the PARTIES in preparing, and in reducing the
7 number and extent of, requests for under seal filing is essential. If a RECEIVING
8 PARTY's request to file PROTECTED MATERIAL under seal pursuant to Local
9 Rule 141 is denied by the COURT, then the RECEIVING PARTY may file the
10 material in the public record unless (1) the DESIGNATING PARTY seeks
11 reconsideration within four (4) days of the denial, or (2) as otherwise instructed by
12 the COURT. Notwithstanding the above, the filing PARTY shall, in good faith,
13 refrain from drawing public attention to the COURT filing of information formerly
14 designated as CONFIDENTIAL so long as the original designation was made in
15 good faith.

16 12.4 Storage of Protected Information by RECEIVING PARTY. The
17 recipient of any PROTECTED MATERIAL provided under this PROTECTIVE
18 ORDER (including copies or excerpts made thereof) shall maintain such
19 information in a secure and safe area, and shall exercise reasonable and proper care
20 with respect to the storage, custody, use, and/or dissemination of such information.

21 12.5 Final Disposition. Within sixty (60) days after the final disposition of
22 this ACTION, each RECEIVING PARTY must return all PROTECTED
23 MATERIAL to the PRODUCING PARTY or make a good faith effort to destroy
24 such material. As used in this subdivision, "all PROTECTED MATERIAL"
25 includes all copies, abstracts, compilations, summaries, and any other format
26 reproducing or capturing any of the PROTECTED MATERIAL. Whether the
27 PROTECTED MATERIAL is returned or destroyed, the RECEIVING PARTY
28 must submit a written certification to the PRODUCING PARTY (and, if not the

1 same person or entity, to the DESIGNATING PARTY) by the sixty (60) day
2 deadline that (1) identifies (by category, where appropriate) all the PROTECTED
3 MATERIAL that was returned or destroyed and (2) affirms that the RECEIVING
4 PARTY has not intentionally retained any copies, abstracts, compilations,
5 summaries or any other format reproducing or capturing any of the PROTECTED
6 MATERIAL. Notwithstanding the foregoing portion of this Section, (1) COUNSEL
7 are entitled to retain an archival copy of all pleadings, motion papers, trial,
8 deposition, and hearing transcripts, legal memoranda, correspondence, email,
9 deposition and trial exhibits, EXPERT reports, attorney work product, and
10 consultant and EXPERT work product, even if such materials contain PROTECTED
11 MATERIAL; and (2) the undersigned PARTIES may retain any PROTECTED
12 MATERIAL to the extent necessary pursuant to legal requirements, professional
13 duties or bona fide document retention policies, provided however that the
14 PARTIES shall continue to be bound by the terms of this PROTECTIVE ORDER
15 for such time period as they retain such PROTECTED MATERIAL. Any such
16 archival copies or retained DOCUMENTS that contain or constitute PROTECTED
17 MATERIAL remain subject to this PROTECTIVE ORDER as set forth in Section
18 4.2 regarding duration.

19 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

20
21 Dated: January 26, 2022 McCLOSKEY, WARING, WAISMAN &
DRURY LLP

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23 By: /s/ Sonia S. Waisman (as approved 1/13/22)
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Sonia S. Waisman
Attorneys for Plaintiff St. Paul Fire and Marine
Insurance Company

Dated: January 26, 2022

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By: /s/ James P. Wagoner
James P. Wagoner
Kevin D. Hansen
Brandon M. Fish
Attorneys for Plaintiff New York Marine and
General Insurance Company

Dated: January 26, 2022

NEMECEK & COLE, a PC

By: /s/Matthew J. Hafey (as approved 1/26/22)
Matthew J. Hafey
Attorneys for Defendant Kinsale Insurance
Company

Dated: January 26, 2022

PLEDGER LAW, PC

By: /s/Jean M. Pledger (as approved 1/13/22)
Jean M. Pledger
Attorneys for Real PARTIES in Interest TRC
Operating Company, Inc. and TRC Cypress
Group, LLC

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ORDER

Pursuant to the above stipulation of the PARTIES and good cause showing, the Court adopts the stipulated protective order.

The parties are advised that pursuant to the Local Rules of the United States District Court, Eastern District of California, any documents subject to the protective order to be filed under seal must be accompanied by a written request which complies with Local Rule 141 prior to sealing. The party making a request to file documents under seal shall be required to show good cause for documents attached to a non-dispositive motion or compelling reasons for documents attached to a dispositive motion. *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-78 (9th Cir. 2009).

Within five (5) days of any approved document filed under seal, the party shall file a redacted copy of the sealed document. The redactions shall be narrowly tailored to protect only the information that is confidential or was deemed confidential.

IT IS SO ORDERED.

Dated: February 10, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE