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 6 COMPANY

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 8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA  
 10 SACRAMENTO DIVISION  
 11

12 AMERICAN STATES INSURANCE  
 13 COMPANY, an Indiana Corporation

14 Plaintiff,

15 v.

16 INSURANCE COMPANY OF THE  
 17 STATE OF PENNSYLVANIA, a  
 18 Pennsylvania Corporation

19 Defendant.  
 20

Case No. 2:12-CV-01489-MCE-AC

(Related With Case No:  
 2:11-CV-00346-MCE-JFM)

**DISCOVERY MATTER**

**PROTECTIVE ORDER**

21 This matter came before the undersigned upon the Motion of American States  
 22 Insurance Company (“ASIC”) for a Protective Order. Insurance Company of Pennsylvania  
 23 (“ISOP”) agreed to certain provisions in ASIC’s Proposed Protective Order but opposed  
 24 certain proposed provisions and proposed certain additional language. The court has  
 25 reviewed the following documents:

- 26 1. Notice and Motion for Protective Order
- 27 2. Joint Statement

1 3. Declarations of Jerry Strawn, Rhonda Cully, Brenda Bissett, Lisa Pan, James  
2 Drake and Frank Kaplan, and exhibits (if any) thereto.

3 The court also heard oral argument on January 7, 2015. On January 14, 2015, the  
4 Honorable Magistrate Judge Allison Claire issued an Order on the motion, a copy of which  
5 is attached hereto and labeled Exhibit B. Based upon said Order, the court issues the  
6 following Protective Order binding the parties hereto:

7 The court finds that “good cause” exists for the issuance of this Protective Order,  
8 specifically, a court order is necessary in order to facilitate the exchange of information  
9 through discovery and other means, to protect potentially confidential information from  
10 being disseminated or used for purposes outside this case, and to avoid inadvertent waiver  
11 of applicable privileges;

12 ASIC and ISOP (“The Parties”) shall be bound by the following Protective Order:

13 **Definitions**

14 1. The term “Related Action” shall refer to that lawsuit titled *Sierra Pacific*  
15 *Industries v. American States Insurance Company*, United States District Court, Eastern  
16 District of California, Case No. 2:11-cv-00346-MCE-JFM (Related Case Order filed July  
17 19, 2012, Docket Entry #88) .

18 2. The term “Moonlight Fire Lawsuits” shall refer to the lawsuits identified in  
19 paragraphs 22, 23, 30 to 33 of ASIC’s Third Amended Complaint herein (Docket Entry  
20 #41)

21 3. The term “Confidential Information” will mean and include information  
22 contained or disclosed in any materials that is designated as Confidential Information by  
23 the producing Party, including documents, portions of documents, answers to  
24 interrogatories, responses to requests for admissions, trial testimony, deposition testimony,  
25 and transcripts of trial testimony and depositions, including data, summaries, and  
26 compilations derived therefrom. Confidential Information may include, but is not limited  
27 to: internal claims handling guidelines and procedures; underwriting files; pricing models  
28

1 and calculations; account strategy; and an individual's personal, health, or financial  
2 information. Confidential Information may also include documents, materials or  
3 information relating to Sierra Pacific Industries' ("SPI's") litigation strategy or substantive  
4 claims or defenses in the underlying Moonlight Fire Lawsuits and information and  
5 documents obtained by any Party through the Related Action that were designated as  
6 Confidential Information under the Protective Order entered in the Related Action.

7 4. The term "materials" shall mean and include, without limitation, any and all  
8 "documents" and other items identified in and within the scope of FED. R. CIV. P. 34(a) and  
9 the 1970 Advisory Committee Note thereto, and all forms of "writings" and "recordings"  
10 as defined in FED. R. EVID. 1001(1), including, but not limited to: documents;  
11 correspondence; memoranda; bulletins; telegrams; letters; statements; guidelines and  
12 policies; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes  
13 of conversations; desk diaries; appointment books; expense accounts; recordings;  
14 photographs; motion pictures; compilations from which information can be obtained and  
15 translated into reasonably usable form through detection devices; sketches; drawings;  
16 notes; reports; instructions; disclosures; and other writings.

17 5. The term "Counsel" will mean either Party's outside counsel, and other  
18 attorneys, paralegals, secretaries, and other support staff employed in those law firms.

19 6. The terms "Employee" and "Employees" shall refer to the respective officers,  
20 directors and employees of the Parties or any affiliates of the Parties, including but not  
21 limited to the Parties' or their affiliates' claims personnel, employed counsel, technical  
22 personnel, clerical personnel, or support staff.

### 23 **General Rules**

24 1. Each Party to this litigation that produces or discloses any materials or  
25 information that the producing Party believes constitutes Confidential Information that  
26 should be subject to this Protective Order may designate the same as "CONFIDENTIAL  
27 PURSUANT TO PROTECTIVE ORDER" only if it contains or consists of (i) trade secrets

1 or competitively sensitive technical, financial, marketing or other commercial information;  
2 (ii) information potentially prejudicial to SPI's litigation strategy or substantive claims or  
3 defenses in the underlying Moonlight Fire Lawsuits; or (iii) information obtained through  
4 the Related Action and which is designated as Confidential Information and subject to the  
5 Protective Order in place in the Related Action. The producing Party may designate  
6 material "confidential" by clearly marking each page "CONFIDENTIAL PURSUANT TO  
7 PROTECTIVE ORDER." Material produced without such a marking is not confidential  
8 and is not protected by this Order.

9         2. Whenever a deposition taken on behalf of any Party involves a disclosure of  
10 Confidential Information of any Party or of SPI, the deposition or portions of the  
11 deposition must be designated as containing Confidential Information subject to the  
12 provisions of this Order; such designation must be made on the record whenever possible,  
13 but a Party may designate portions of depositions as containing Confidential Information  
14 after transcription of the proceedings; a Party will have until fourteen (14) days after  
15 receipt of the deposition transcript to inform the other Party or Parties to the action of the  
16 portions of the transcript to be designated "CONFIDENTIAL PURSUANT TO  
17 PROTECTIVE ORDER." Original deposition transcripts and all copies of the deposition  
18 must bear the legend "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER" as  
19 appropriate.

20         3. Information designated "CONFIDENTIAL PURSUANT TO  
21 PROTECTIVE ORDER" shall be viewed only by Counsel (as defined in paragraph 5) of  
22 the receiving Party, the Employees (as defined in paragraph 6) of the receiving Party, and  
23 by the additional individuals listed below, provided each such additional individual listed  
24 below has read this Order in advance of disclosure and has agreed in writing to be bound by  
25 its terms by signing the agreement attached hereto as Exhibit A:

- 26         (a) Independent experts retained by the Parties or their counsel to consult or  
27 testify in connection with this case; and  
28

1 (b) Any other person or entity identified by a written agreement or stipulation  
2 between the Parties. To the extent that either Party has a disclosure obligation to  
3 regulators, auditors, reinsurers and/or accountants and any one of those identified  
4 individuals requests access to the other Party's Confidential Information disclosed  
5 in this case, then such information shall be provided without the individual needing  
6 to execute Exhibit A hereto.

7 4. With respect to material designated "CONFIDENTIAL PURSUANT TO  
8 PROTECTIVE ORDER," any person indicated on the face of the document to be its  
9 originator, author or a recipient of a copy of the document, may be shown the same without  
10 signing Exhibit A.

11 5. Without a Court order or written permission from the producing Party, a  
12 Party that desires to submit Confidential Information to the Court must file it under seal in  
13 accordance with Local Rule 141.

14 6. At any stage of these proceedings, any Party may object to a designation of  
15 materials as "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER." The Party  
16 objecting to the confidentiality designation must notify Counsel for the designating Party  
17 of the objected-to materials and the grounds for the objection. If the dispute is not resolved  
18 between the Parties within seven (7) days of receipt of such a notice of objections, the  
19 objecting Party may move the Court for a ruling on the objection. The Party designating  
20 material as "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER" bears the  
21 burden of proof. The materials at issue must be treated as "CONFIDENTIAL  
22 PURSUANT TO PROTECTIVE ORDER" pursuant to the terms of this Protective Order,  
23 until the Court has ruled on the objection or the matter has been resolved by agreement of  
24 the Parties.

25 7. All Confidential Information must be held in confidence by those inspecting  
26 or receiving it, and must be used only for purposes of litigating this action or adjusting the  
27 underlying claims. Counsel for each Party, and each person receiving Confidential  
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1 Information, must take reasonable precautions to prevent the unauthorized or inadvertent  
2 disclosure of such information.

3 8. If Confidential Information is disclosed by a Party other than the producing  
4 Party to any person other than a person authorized by this Order, the Party responsible for  
5 the unauthorized disclosure must, within seven (7) days of discovering the unauthorized  
6 disclosure, (1) notify the unauthorized recipient that the disclosed material is confidential  
7 pursuant to the terms of this Order; (2) provide the unauthorized recipient with a copy of  
8 this Order; (3) request that the unauthorized recipient immediately destroy all copies of the  
9 Confidential Information in his or her possession and refrain from disclosing the  
10 Confidential Information to anyone else; and (4) notify the producing Party of the  
11 unauthorized disclosure and the completion of steps 1, 2 and 3 above.

12 9. Nothing in this Order authorizes discovery that is otherwise improper under  
13 the Federal Rules of Civil Procedure.

14 10. Upon final termination of this action, including any appeals, the Parties, their  
15 respective Counsel and Employees (as defined in paragraphs 5 and 6, respectively), and  
16 any other person to whom Confidential Information has been provided in accordance with  
17 paragraph 3 above, will continue to be bound by this Order with respect to all Confidential  
18 Information.

19 11. SPI billings and invoices for attorneys' fees, expert fees and other litigation  
20 expenses shall be marked "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER"  
21 and subject to this Order. These materials disclose attorney work-product and  
22 attorney-client privileged communications, of which the disclosure to third parties could  
23 result in claims of waiver of the privilege and potentially result in disclosure of sensitive  
24 litigation strategy to SPI's litigation opponents in the Moonlight Fire Lawsuits.

25 12. All documents marked "ATTORNEY-CLIENT PRIVILEGED,"  
26 "WORK-PRODUCT PROTECTION," "OR "CONFIDENTIAL," in the Related Action  
27 shall be similarly designated or designated "CONFIDENTIAL PURSUANT TO  
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1 PROTECTIVE ORDER” in this action and subject to this Order. The extension of  
2 confidentiality of these documents to this action is necessary to protect the parties against  
3 claims of waiver of privilege and potential disclosure of sensitive litigation strategy to  
4 SPI’s litigation opponents in the Moonlight Fire Lawsuits.

5 13. To protect the confidentiality of the settlements and avoid jeopardizing SPI’s  
6 ongoing defense in the Moonlight Fire Lawsuits, the settlement agreements between ASIC  
7 and SPI, and between ISOP and SPI, shall be marked “CONFIDENTIAL PURSUANT TO  
8 PROTECTIVE ORDER” and subject to the provisions of this Order.


9 14. In lieu of producing individual checks, as evidence of payments made by  
10 either of them, the Parties may produce computerized payment screens or payment ledgers  
11 showing payments made by them towards SPI’s defense fees and costs in the Moonlight  
12 Fire Lawsuits.

13 15. Transmission by email or facsimile is acceptable for all notification purposes  
14 within this Order.

15 16. The Parties may modify this Order by agreement, subject to Court approval.

16  
17 **SO ORDERED.**

18  
19 Dated: February 20, 2015

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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Case No. 2:12-CV-01489-MCE-CKD

(Related With Case No:  
2:11-CV-00346-MCE-JFM)

EXHIBIT A: DECLARATION OF  
CONFIRMING  
COMPLIANCE WITH STIPULATED  
PROTECTIVE ORDER

21 I, \_\_\_\_\_, declare the following:

22  
23 1. I have read and I understand the Stipulated Protective Order entered in  
24 American States Insurance Company v. Insurance Company of the State of  
25 Pennsylvania, United States District Court, Easter District of California, Case No.  
26 2:12-CV-01489-MCE-CKD, and I agree to be bound by its terms.  
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