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7 Attorneys for Defendant
WILLIS OF TEXAS, INC.

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

12 ALPHA DYNO NOBEL, a California
corporation,

13 Plaintiff,

14 v.

15 WILLIS OF TEXAS, INC., a Texas
16 corporation,

17 Defendant.

Case No. 2:15-cv-01745-WBS-CKD

**STIPULATION AND [PROPOSED]
ORDER TO STAY FURTHER
PROCEEDINGS**

1 WHEREAS, this action involves a single claim by Plaintiff Alpha Dyno Nobel (“Alpha”)
2 against Willis of Texas, Inc. (“Willis”) for failure to procure adequate insurance coverage;

3 WHEREAS, Alpha is the insured under a commercial general liability insurance policy
4 and a commercial excess insurance policy, both issued by Lancer Insurance Company (“Lancer”)
5 for the policy period July 1, 2013 to July 1, 2014 (the “Policies”);

6 WHEREAS, on December 18, 2015, Lancer filed an action against Alpha , and others, in
7 the Eastern District of California to reform the Policies to add certain exclusions from coverage
8 that occur in Alpha’s day-to-day operations (“Lancer Action”);

9 WHEREAS, on January 16, 2015, a complaint was filed against Alpha in a state court
10 proceeding pending in Kern County Superior Court in connection with certain claims arising out
11 of injuries and/or damages alleged to have occurred during the scheduled demolition of boiler
12 structures on or about August 3, 2013 (“State Court Action”);

13 WHEREAS, in or around August 2013, Alpha submitted to Lancer a tender of defense
14 and coverage in connection with the claims asserted in the State Court Action;

15 WHEREAS, Lancer initially refused to tender a defense to Alpha for the State Court
16 Action;

17 WHEREAS, as a result of, *inter alia*, the Lancer Action and Lancer’s refusal to provide a
18 defense in the State Court Action, on August 18, 2015, Alpha initiated the instant lawsuit against
19 Willis, claiming that Willis failed to obtain adequate insurance coverage on Alpha’s behalf (the
20 “Lawsuit”);

21 WHEREAS, Alpha determined that it was necessary to file the Lawsuit on August 18,
22 2015, in light of certain potential statute of limitations deadlines;

23 WHEREAS, approximately thirty-five days after the Lawsuit was filed, on September 22,
24 2015, Lancer informed Alpha by letter that it had re-evaluated its position and would agree, under
25 a reservation of rights, to defend Alpha in connection with the claims asserted in the State Court
26 Action;

27 WHEREAS, Lancer’s intervening decision on September 22, 2015 to provide a defense to
28 Alpha in the State Court Action meaningfully impacts the claim asserted in this Lawsuit;

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WHEREAS, the potential outcomes of both the State Court Action and the Lancer Action will meaningfully impact the claim asserted in this Lawsuit;

WHEREAS, the Parties believe that, in light of the recent development, it is in the interest of judicial economy and fundamental fairness to stay all further proceedings in this Lawsuit pending the outcome of the State Court Action and the Lancer Action;

NOW, THEREFORE, the Parties hereby stipulate to the following, subject to the approval of the Court:

- 1. This action will be stayed in all respects until thirty (30) days after the occurrence of any of the following:
 - a. entry of final judgment in the State Court Action or the Lancer Action;
 - b. resolution of the State Court Action or Lancer Action by any means resulting in a dismissal in whole or in part of the action; or
 - c. withdrawal of coverage of Alpha in the State Court Action.
- 2. Upon expiration of the Stay, the Parties shall promptly meet and confer and submit a status report to the Court regarding further proceedings in this action.
- 3. The Parties agree that the Stay shall not impact such rights and defenses, including any procedural or substantive claims or defenses, as either party may have in this action as of the time of the Parties' entry into this stipulation.
- 4. The Scheduling Conference set for December 7, 2015 is vacated.

SO STIPULATED.

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DATED: October 15, 2015

DOWNEY BRAND LLP

By: /s/ Avalon J. Fitzgerald
AVALON J. FITZGERALD
Attorney for Defendant
WILLIS OF TEXAS, INC.


DATED: October 15, 2015

ARONOWITZ SKIDMORE LYON, APLC

By: /s/ Kathleen C. Lyon
KATHLEEN C. LYON
Attorney for Plaintiff
ALPHA DYNO NOBEL

IT IS SO ORDERED.

Dated: October 16, 2015


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE