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9 Attorneys for Plaintiff, Landmark American Insurance Company

10 UNITED STATE DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 LANDMARK AMERICAN INSURANCE  
13 COMPANY, an Oklahoma Corporation

14 Plaintiff,

15 v.

16 LIBERTY SURPLUS INSURANCE  
17 CORPORATION, a New Hampshire  
18 corporation, QBE SPECIALTY INSURANCE  
19 COMPANY and DOES 1 through  
20 50,Inclusive,

21 Defendants.

CASE NO. 2:17-cv-00061-KJM-KJN

**STIPULATION AND PROTECTIVE  
ORDER AND ORDER THEREON**

22 **IT IS HEREBY STIPULATED** by and among Plaintiff Landmark American Insurance  
23 Company (hereinafter referenced as "Landmark"), Defendant Liberty Surplus Insurance  
24 Corporation (hereinafter referenced as "Liberty"), and Defendant QBE Specialty Insurance  
25 Company (hereinafter referenced as "QBE"), and which parties are collectively referenced  
26 herein as the "Parties", by and through their respective counsels of record, that in order to  
27 facilitate the exchange of information and documents which may be subject to confidentiality  
28 limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate  
to the following for the Discovery Process only:

1           1. Any Party producing documents shall have the right to designate as “Confidential” the  
2 attorney's fees, expert fees, defense costs, or indemnity costs related to the defense and  
3 indemnity of River City Caulking and/or Howard S. Wright in the matter entitled *The Regents of*  
4 *the University of California v. Howard S. Wright Construction Co., et. al.*, Yolo County Superior  
5 Court No. CV13-1911 (the “Underlying Action”), that the Party, in good faith believes to  
6 contain non-public information that is entitled to confidential treatment under applicable law.

7           2. All Confidential materials shall not be disclosed to any person or entity except in  
8 accordance with the terms, conditions and instructions of this Stipulation and Protective Order.

9           3. The entry of this Stipulation and Protective Order and the production of documents  
10 pursuant hereto, does not prejudice, alter, waive, modify or abridge any right, privilege or  
11 protection otherwise available to any Party with respect to the discovery of matters, including but  
12 not limited to, any Party’s right to assert the attorney-client privilege, the attorney work product  
13 doctrine, or other privileges, or any Party’s right to contest any such assertion. In addition, the  
14 production of documents does not waive any privilege that applies to such documents.

15           4. Access to and/or disclosure of Confidential materials shall be permitted only to the  
16 following persons:

- 17           a.       the Court;
- 18           b.       any mediator, special master, arbitrator or other person conducting another  
19 alternative dispute resolution process in this Proceeding;
- 20           c.       (i) attorneys of record in this Proceeding and their affiliated attorneys,  
21 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in  
22 this Proceeding and are not employees of any Party and (ii) the Parties’ in-house counsel, and  
23 such other persons regularly employed by the Parties, who are involved in or consulted with  
24 respect to the prosecution or defense of this Proceeding or handling the underlying claims,  
25 including claims representatives of any Party; *provided, however*, that each non-lawyer given  
26 access to Confidential materials shall be advised that such materials are being disclosed pursuant  
27 to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be  
28 disclosed other than pursuant to its terms;

1 d. insurers, reinsurers, retrocessionaires, accountants, regulators, auditors,  
2 and any other person to whom the Parties have a contractual, regulatory or statutory obligation to  
3 report; *provided, however*, that each such person given access to Confidential materials shall be  
4 advised that such materials are being disclosed pursuant to, and are subject to, the terms of this  
5 Stipulation and Protective Order and that they may not be disclosed other than pursuant to its  
6 terms;

7 e. any deposition witness in this Proceeding *provided, however*, that each  
8 such person given access to Confidential materials shall be advised that such materials are being  
9 disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and  
10 that they may not be disclosed other than pursuant to its terms;

11 f. outside experts or consultants consulted by the undersigned Parties or their  
12 counsel in connection with this Proceeding, whether or not retained to testify at any oral hearing;  
13 *provided, however*, that prior to the disclosure of Confidential materials to any such expert or  
14 consultant, counsel for the Party making the disclosure shall deliver a copy of this Stipulation  
15 and Protective Order to such person, shall explain its terms to such person, and verify they will  
16 comply with its terms. It shall be the obligation of counsel, upon learning of any breach or  
17 threatened breach of this Stipulation and Protective Order by any such expert or consultant, to  
18 promptly notify counsel for the designating Party of such breach or threatened breach;

19 h. court reporters in this Proceeding (whether at depositions, hearings or any  
20 other proceedings) and other persons involved in recording depositions, hearings or any other  
21 proceedings;

22 and

23 i. any other person that the designating Party agrees to in writing.

24 5. Confidential materials shall be used by the persons receiving them only for the  
25 purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting and/or  
26 defending this Proceeding — including any mediation, arbitration or other alternative dispute  
27 resolution process connected with this Proceeding — and not for any business or other purpose  
28

1 whatsoever. Nothing in this Stipulation and Protective Order, however, restricts the use that a  
2 Party may make of any Documents or Information Disclosed by it.

3         6. The inadvertent production by any Party to this Proceeding of any Document, or  
4 category of documents during discovery in this Proceeding without a “Confidential” designation,  
5 shall be without prejudice to any claim that such item, document category (i.e. attorney invoices)  
6 is “Confidential” and such Party shall not be held to have waived any rights by such inadvertent  
7 production. In the event that any Document, that is subject to a “Confidential” designation is  
8 inadvertently produced without such designation, the Party that inadvertently produced the  
9 document shall give written notice of such inadvertent production within twenty-one (21) days of  
10 discovery of the inadvertent production, together with a further copy of the subject Document,  
11 designated as “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such  
12 Inadvertent Production Notice, the Party that received the inadvertently produced Document,  
13 shall promptly segregate and maintain as “Confidential” pending further proceedings set forth in  
14 Paragraph 7 below the inadvertently produced Document, Testimony, Information or Discovery  
15 Response and all copies thereof. This provision is not intended to apply to any inadvertent  
16 production of any Document, Response protected by attorney-client or work product privileges.  
17 In the event that this provision conflicts with any applicable law regarding waiver of  
18 confidentiality through the inadvertent production of Documents, Testimony or Information,  
19 such law shall govern.

20         7. In the event that counsel for a Party receiving Documents in discovery designated  
21 as “Confidential” objects to such designation with respect to any or all of such items, said  
22 counsel shall advise counsel for the designating Party, in writing, of such objections, the specific  
23 Document, to which each objection pertains, and the specific reason and support for such  
24 objections (the “Designation Objections”). Counsel for the designating Party shall have thirty  
25 (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-  
26 designate the Document, Testimony, Information or Discovery Response pursuant to any or all  
27 of the Designation Objections; and/or (b) file a motion with the Court seeking to uphold any or  
28 all designations on the Document, Testimony, Information or Discovery Response addressed by

1 the Designation Objections (the “Designation Motion”). Pending a resolution of the Designation  
2 Motion by the Court, any and all existing designations on the Document, Testimony, Information  
3 or Discovery Response at issue in such Motion shall remain in place. The designating Party  
4 shall have the burden on any Designation Motion of establishing the applicability of its  
5 “Confidential” designation. In the event that the Designation Objections are neither timely  
6 agreed to nor timely addressed in the Designation Motion, then such Document, Testimony,  
7 Information or Discovery Response shall be de-designated in accordance with the Designation  
8 Objection applicable to such material.

9 8. Any Party to this Proceeding (or other person subject to the terms of this  
10 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties  
11 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective  
12 Order.

13 9. Nothing in this Stipulation and Protective Order shall be construed to preclude  
14 any Party from asserting in good faith that certain Confidential Materials require additional  
15 protection. The Parties shall meet and confer to agree upon the terms of such additional  
16 protection.

17 10. If Confidential materials are submitted to or otherwise disclosed to the Court in  
18 connection with any motions, discovery motions and proceedings, the same shall be separately  
19 filed under seal with the clerk of the Court in an envelope marked: “CONFIDENTIAL – FILED  
20 UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND WITHOUT ANY FURTHER  
21 SEALING ORDER REQUIRED.”

22 11. The Parties shall attempt to agree upon procedures to protect at any hearing the  
23 confidentiality of Documents, filed under seal, as well as for use of Confidential materials at  
24 trial, and shall move the Court for entry of an appropriate order, if necessary.

25 13. This Stipulation and Protective Order shall continue to be binding after the  
26 conclusion of the Proceeding and all subsequent proceedings arising from the Proceeding,  
27 including any appeal or retrial, except that a Party may seek the written permission of the  
28 designating Party or may move the Court for relief from the provisions of this Stipulation and

1 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction to enforce,  
2 modify, or reconsider this Stipulation and Protective Order, even after this Proceeding is  
3 terminated.

4 14. Upon written request made within thirty (30) days after the settlement or other  
5 termination of this Proceeding, the undersigned Parties shall have thirty (30) days to either (a)  
6 promptly return to counsel for each designating Party all Confidential Materials and all copies  
7 thereof (except that counsel for each Party may maintain in its files, in continuing compliance  
8 with the terms of this Stipulation and Protective Order, all work product, and one copy of each  
9 pleading filed with the Court and one copy of each deposition together with the one copy of each  
10 exhibit marked at the deposition; and to the extent a Party needs to retain Confidential Material  
11 for legitimate business reasons, it may do so but such Confidential Material shall remain subject  
12 to this Order); (b) agree with counsel for the Designating Party upon appropriate methods and  
13 certification of destruction or other disposition of such Confidential Materials; (c) agree to keep  
14 all Confidential Materials confidentially and to dispose of same pursuant to the Party's document  
15 retention policy or (d) as to any Documents, Testimony, Information or Discovery Response not  
16 addressed by sub-paragraphs (a) (b) and (c), file a motion seeking a Court order regarding proper  
17 preservation of such Materials. To the extent permitted by law the Court shall retain continuing  
18 jurisdiction to review and rule upon the motion referred to in sub-paragraph (d) herein.

19 15. After this Stipulation and Protective Order has been signed by counsel for all  
20 Parties, it shall be presented to the Court for entry. In the event that the Court modifies this  
21 Stipulation and Protective Order, or in the event that the Court enters a different Protective  
22 Order, the Parties and counsel agree to be bound by this Stipulation and Protective Order until  
23 such time as the Court may enter such a different Order. It is the Parties' intent to be bound by  
24 the terms of this Stipulation and Protective Order pending its entry so as to allow for immediate  
25 production of Confidential materials under the terms herein.

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1 This Stipulation and Protective Order may be executed in counterparts.

2 **IT IS HEREBY STIPULATED BY:**

3  
4 Dated: August 31 , 2017

GILL & RHOADES LLP

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7 By:  /s/ Julie Rhoades, Esq.

Julie Rhoades

Susan J. Gill

8 Attorneys for Plaintiff, Landmark American Insurance  
9 Company

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11  
12  
13 Dated: August 31, 2017

BURNHAM BROWN

14  
15  
16 By:  /s/ David H. Waters, Esq.

David H. Waters

B. Natalie Vu

17 Attorneys for Defendant, Liberty Surplus Insurance  
18 Corporation

19  
20  
21 Dated: August 31 , 2017

YARON & ASSOCIATES

22  
23  
24 By:  /s/ Jenna Eve Settino, Esq.

George D. Yaron

Jenna Eve Settino

25 Attorneys for Defendant,  
26 QBE Specialty Insurance Corporation  
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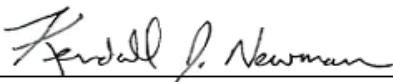
ORDER

The parties' stipulated protective order is APPROVED, except that:

1. Paragraph 10 is DISAPPROVED. The parties are not authorized to automatically file documents with the court under seal. The parties shall comply with the provisions of Local Rules 140 and 141, as well as the district judge's scheduling order (ECF No. 23, Section VII) with respect to sealing or redaction requests.
2. Nothing in this order limits the testimony of parties or non-parties, or the use of certain documents, at any court hearing or trial—such determinations will only be made by the court at the hearing or trial, or upon an appropriate motion.
3. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement of the terms of this stipulated protective order after the action is terminated.

**IT IS SO ORDERED.**

Dated: September 8, 2017

  
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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE