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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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AMERICAN AUTOMOBILE
INSURANCE COMPANY, a Missouri
Corporation and INTERSTATE FIRE
AND CASUALTY COMPANY,

7   Plaintiffs,

8   v.

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UNITED SPECIALTY INSURANCE
COMPANY, a Delaware Corporation;
10   and DOES 1 through 100,

11   Defendants.

Case No. 2:18-cv-00461-KJM-EFB

**[~~PROPOSED~~] CONFIDENTIALITY
AND PROTECTIVE ORDER**

Assigned to the Honorable Judge
Kimberly J. Mueller

Action filed: March 1, 2018
Trial Date: Not Yet Set

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13   Pursuant to the Stipulation of the Parties filed on August 7, 2018, and after

14   careful consideration, it is hereby ordered as follows:

15   1.   This Protective Order regarding privileged, confidential, proprietary,

16   and/or trade secret information applies in the above-captioned case to documents

17   designated as "CONFIDENTIAL."

18   2.   Subject to the term and restrictions of this Protective Order, the parties

19   or otherwise interested persons may exchange privileged, confidential, trade secret,

20   proprietary, or otherwise sensitive non-public documents or information. No

21   provision in this Protective Order shall be construed as requiring the disclosure of

22   any documents or information.

23   3.   This Protective Order applies to all documents and information

24   produced by Plaintiffs, American Automobile Insurance Company ("AAIC"),

25   Interstate Fire and Casualty Company ("Interstate") or defendant United Specialty

26   Insurance Company ("USIC"), designated by the producing party as

27   "CONFIDENTIAL" in accordance with the terms of this Protective Order.

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[~~PROPOSED~~] CONFIDENTIALITY AND
PROTECTIVE ORDER

1   4.   The parties may agree, in writing or on the record of any hearing,

2 deposition or other proceeding in this matter, that additional documents,

3 information, testimony, or materials may be brought within the provisions of this

4 Protective Order.

5   5.   Prior to producing documents or information, AAIC, Interstate, or

6 USIC shall mark as "CONFIDENTIAL" any information, document, or portion of

7 any document that contains trade secrets or other confidential technical proprietary,

8 or financial information. In addition, as described in the provisions below, any other

9 party has a right to challenge the propriety of a designation (or lack thereof) if it

10 believes any designation was inappropriate, erroneous, or made in bad faith.

11   6.   The designation "CONFIDENTIAL" may be applied to information

12 that AAIC, Interstate, or USIC believes is privileged, confidential, proprietary, of a

13 commercially sensitive nature, or which qualifies as a trade secret under California

14 or Federal law ("Confidential Information").

15   7.   A confidentiality designation under this Order shall be made by

16 stamping or labeling each page containing Confidential Information as

17 "CONFIDENTIAL."

18   8.   AAIC, Interstate, USIC, or their respective counsel may state on the

19 record of any proceeding in which oral testimony is provided that specific testimony

20 is "CONFIDENTIAL." AAIC, Interstate, USIC, or their respective counsel may

21 also designate oral testimony as "CONFIDENTIAL" by providing written notice to

22 all receiving parties and the court reporter within fifteen days of receipt of any

23 transcript of the specific pages and lines of the transcript that contains Confidential

24 Information. The court reporter shall make appropriate notations of confidentiality

25 on the pages of the transcript containing Confidential Information in accordance

26 with the designations supplied and additionally note on the cover of the transcript

27 that it contains Confidential Information subject to a Protective Order.

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1   9.   Accidental disclosure of Confidential Information does not waive the
2 confidentiality otherwise attached to the Confidential Information.

3   10.   Any party to this case may challenge another party's designation of a
4 document or information as Confidential under this Order by delivering written
5 notice to counsel identifying the document or information, and one or more bases
6 for challenging the initial Confidential designation. If the dispute is not resolved
7 consensually between the parties within seven (7) days of receipt of such notice of
8 objection, the objecting party may move the Court for a ruling on the objection. The
9 materials at issue must be treated as Confidential Information, as designated by the
10 designating party, until the Court has ruled on the objection or the matter has been
11 otherwise resolved. Any motion challenging a designation pursuant to this
12 paragraph will be made in compliance with Local Rules 251(b) 251 (c) and 251(d).

13   11.   No person who receives documents or information designated as
14 "CONFIDENTIAL" may disclose such to any other person, except as permitted by
15 this Protective Order, unless and until such designation is removed by the
16 designating party, or an order of the Court removing or denying Confidential status.

17   12.   Any party may disclose information or documents designated as
18 Confidential to any expert witness or litigation consultant retained in this matter
19 only for use in this matter on the condition that the witness or consultant
20 acknowledge in writing receipt of a copy of this Stipulation and Protective Order
21 and express in that writing his or her agreement to be bound by the terms of this
22 Protective Order.

23   13.   All information which has been designated as "CONFIDENTIAL" by
24 the producing or disclosing party, and any and all reproductions of that information,
25 must be retained in the custody of the counsel for the receiving party, except that
26 independent experts authorized to view such information under the terms of this
27 Order may retain custody of copies such as are necessary for their participation in
28 this litigation.

1   14.   Subject to the terms of this Protective Order and the applicable

2   provisions of the Rules of Civil Procedure, any receiving party may use Confidential

3   Information or documents in the course of a deposition or hearing, or in the course

4   of examining any witness, provided that counsel conducting the examination

5   believes in good faith that disclosure to such witness is necessary to obtain

6   testimony pertinent to a matter genuinely at issue in this case and that, prior to

7   completion of the examination, the witness is furnished with a copy of this

8   Protective Order.

9   15.   In the event that a non-party witness is shown Confidential documents

10   or information during the course of an examination, the witness will be advised on

11   the record of that examination of the terms of this Protective Order, and shall be

12   advised on the record that he or she is subject to sanctions, including contempt, for

13   violating the terms of this Order. Any disclosure pursuant to this paragraph shall

14   not constitute a waiver of the confidentiality designations originally assigned to the

15   Confidential documents or information.

16   16.   The designation of documents, information, or testimony as

17   Confidential shall not in any way constitute a waiver of any objection to otherwise

18   improper discovery in this case, whether such discovery is oral or written.

19   17.   All documents and information designated as "CONFIDENTIAL"

20   pursuant to the terms of this Protective Order ~~that are filed with the Court and any~~

21   ~~pleadings, motions, or other papers filed with the Court disclosing any confidential~~

22   ~~information, shall be filed under seal and kept under seal until further order of the~~

23   ~~Court. The parties shall follow the procedures set forth in United States District~~

24   ~~Court, Eastern District of California Local Rule 141.~~ may only be filed under seal

25   pursuant to a court order authorizing the sealing of the specific Protected Material at

26   issue. However, the designation of material as confidential, without more, is

27   insufficient to obtain a sealing order. Any party that seeks to file Protected Material

28   under seal must comply with Local Rule 141, which governs motions for a sealing

order. As provided in Local Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. Further, the briefing on the motion for a sealing order shall address U.S. Supreme Court and Ninth Circuit standards for whether the material may be filed under seal. Regardless of which party files the motion for a sealing order, the party that designated the material as confidential shall file a brief addressing those standards, and shall have the burden of establishing that the Protected Material should be filed but not made publicly available.

18.   All Confidential Information must be held in confidence by those inspecting or receiving it, and must be used only for the purpose of this action. Counsel for each party, and each person receiving Confidential Information must take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such information. If Confidential Information is disclosed to any person other than a person authorized by this Order, the person responsible for the unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the attention of the other parties and, without prejudice to any rights and remedies of the other parties, make every effort to prevent further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

19.   This Order shall survive the termination of this case. All parties agree to refrain from any distribution, copying, or dissemination of Confidential Information or documents and to abide by the terms of this Protective Order after the termination of the case. Within ninety days of final termination of this case and all related proceedings (factually or legally), the parties must destroy or return to the producing party, or its counsel, all documents or other materials containing Confidential Information and, upon request of the producing party, shall so certify that such destruction or return has occurred within ninety days of termination of this case.

1   20.   No party shall distribute a copy of any document or information

2 designated as Confidential to parties to this case who have not agreed to the terms of

3 this Order.

4   IT IS SO ORDERED.

5 Dated: August 14, 2018.

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6   EDMUND F. BRENNAN
         UNITED STATES MAGISTRATE JUDGE

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