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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

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11 SPECIAL DISTRICT RISK MANAGEMENT
 AUTHORITY, a joint powers authority,

Case No. 2:20-CV-02404-TLN-CKD

12

Plaintiff,

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

13

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v.

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MUNICH REINSURANCE AMERICA, INC.,
 a corporation; GENERAL REINSURANCE
 16 CORPORATION, a corporation; and Does 1-
 100 inclusive,,
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Defendants.

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Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff SPECIAL
 21 DISTRICT RISK MANAGEMENT AUTHORITY. (“Plaintiff” or “SDRMA”) and Defendant
 22 MUNICH REINSURANCE AMERICA, INC. (“MunichRe”) and Defendant GENERAL
 23 REINSURANCE CORPORATION (“GenRe”) (collectively “Defendants”), through counsel
 24 undersigned, jointly submit this Stipulated Protective Order to govern the handling of information
 25 and materials produced in the course of discovery or filed with the Court in advance of trial in this
 26 action.

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GOOD CAUSE STATEMENT PURSUANT TO L.R. 141.1(c)

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Disclosure and discovery activity in this action are likely to involve production of

1 confidential, proprietary, or private information for which special protection from public disclosure
2 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
3 the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective
4 Order. The parties acknowledge that this Order does not confer blanket protections on all
5 disclosures or responses to discovery, and that the protection it affords from public disclosure and
6 use extends only to the limited information or items that are entitled to confidential treatment under
7 applicable legal principles.

8 **Statement Under L.R. 141.1(c)(1):** Examples of confidential information that the parties
9 may seek to protect from unrestricted or unprotected disclosure include:

- 10 a) Information that is the subject of a non-disclosure or confidentiality agreement or
11 obligation or subject to the mediation or settlement privileges;
- 12 b) Agreements with third-parties, including liability coverage agreements and contract
13 for reinsurance;
- 14 d) Information related to claims administration and management, including but not
15 limited to costs, margins, or other internal financial/accounting information, including non-
16 public information related to financial condition or performance and income or other non-
17 public tax information; and
- 18 e) Information related to past, current, and future market analyses and business and
19 marketing development, including plans, strategies, forecasts and competition.

20 **Statement Under L.R. 141.1(c)(2):** Generally speaking, information and documents shall
21 only be designated under this protective order because the Designating Party believes the
22 information or documents are proprietary and/or confidential that the Designating Party would not
23 release publicly. Unrestricted or unprotected disclosure of such confidential or commercial
24 information would result in prejudice or harm to the Producing Party by revealing the Producing
25 Party's methods for claims administration and claims management. Such information will have been
26 developed at the expense of the Producing Party and represent valuable tangible and intangible
27 assets of that party. Additionally, privacy interests must be safeguarded. Accordingly, the parties
28 respectfully submit that there is good cause for the entry of this Protective Order.

1 a matter pertinent to this litigation who has been retained by a Party to serve as an expert witness or
2 as a consultant in this litigation and who, at the time of retention, is not anticipated to become an
3 officer, director, or employee of a Party. Nothing in this Protective Order purports to alter in any
4 way the requirements for offering testimony under Fed. R. Evid. 703, or to define the term “expert”
5 for purposes other than those addressed in this Protective Order.

6 (h) The term “Non-Party” shall mean any natural person, partnership, corporation,
7 association, or other legal entity not named as a Party to this action.

8 (i) The term “Party” shall mean any party to this action, including all of its officers,
9 directors, employees, and consultants retained in the ordinary course of business.

10 (j) The term “Producing Party” shall mean a Party or Non-Party that produces
11 information or other discovery material in this action.

12 (k) The term “Professional Vendors” shall mean persons or entities that provide
13 litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their
15 employees and subcontractors.

16 (l) The term “Protected Material” shall mean any information or other discovery
17 material that is designated as “Confidential.”

18 (m) The term “Receiving Party” shall mean a Party that receives information or other
19 discovery material from a Producing Party.

20 2. DESIGNATING PROTECTED MATERIAL.

21 (a) Exercise of Restraint and Care in Designating Material for Protection. Each Party or
22 Non-Party that designates information or items for protection under this Order must take care to
23 limit any such designations. The Designating Party must designate for protection only those parts
24 of material, documents, items, or oral or written communications that qualify under the appropriate
25 standards so that other portions of the material, documents, items, or communications for which
26 protection is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
27 indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly
28 unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or

1 retard the case development process or to impose unnecessary expenses and burdens on other
2 parties) expose the Designating Party to sanctions. If it comes to a Designating Party's attention
3 that information or items that it designated for protection do not qualify for protection, that
4 Designating Party must promptly notify all other Parties that it is withdrawing the mistaken
5 designation.

6 (b) Manner and Timing of Designations. Except as otherwise provided in this Order or
7 as otherwise stipulated or ordered, discovery material and information that qualify for protection
8 under this Order must be clearly so designated before the material is disclosed or produced. The
9 Designating Party must use reasonable efforts to ensure that the applicable legend appears on each
10 page of each file produced, as permitted by the particular format of a given Document.

11 (c) Materials Subject to Designation. Each party to this litigation may designate any
12 Document, thing, interrogatory answer, admission, deposition testimony, and portions of such
13 materials, or other information which it has provided or which a third-party has provided as
14 "Confidential" in accordance with this Protective Order. The party designating such information as
15 "Confidential" shall be known as the "Designating Party" and the designation shall be set out
16 thereon. In designating Documents or information as "Confidential," the Designating Party's
17 counsel shall make a good faith determination, before applying the designation, that the information
18 warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure.

19 (d) Designating Originals or Tangible Items. In the event the Producing Party elects to
20 produce original Documents and things for inspection rather than produce copies of Documents, no
21 marking need be made by the Producing Party in advance of the initial inspection. Thereafter, upon
22 selection of specified Documents for copying by the inspecting party, the Producing Party shall
23 mark the copies of such Documents as may contain protected subject matter with the appropriate
24 confidentiality marking at the time the copies are produced to the inspecting party. Said marking
25 shall not delay the production of the copies. Information obtained by counsel from initial review of
26 Documents, whether in written form or not, shall be maintained as "Confidential" unless such
27 information is produced without a designation of confidentiality, or as otherwise designated by the
28 Producing Party.

1 (e) Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

7 (a) Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed. Any party electing to challenge a designation shall comply with
13 the timing requirement set forth in Local Rule 251(a).

14 (b) Meet and Confer. The Challenging Party shall initiate the dispute resolution process
15 under Local Rule 251(b).

16 (c) Joint Statement: Any challenge submitted to the Court shall be via joint stipulation
17 pursuant to Local Rules 251(c).

18 4. ACCESS TO AND USE OF PROTECTED MATERIAL.

19 (a) A Receiving Party may use Protected Material that is disclosed or produced by
20 another Party or by a Non-Party in connection with this case only for prosecuting, defending, or
21 attempting to settle this litigation. If a Receiving Party files Protected Material with the court, the
22 Receiving Party shall file redacted Protected Material and place an unredacted version of filed
23 Protected Material in a sealed envelope to be lodged with the Court and shall request that the Court
24 consider sealing the filing. The Designating Party shall bear the responsibility to take all necessary
25 steps required by the court to seal Protected Material, including filing a motion to seal if required
26 by the Court. Such Protected Material may be disclosed only to the categories of person and under
27 the conditions described in this Order. When the litigation has been terminated, a Receiving Party
28 must comply with the provisions for Final Disposition of Protected Material set forth below.

1 (b) Unless otherwise ordered by the court or permitted in writing by the Designating
2 Party, a Receiving Party may disclose any information or item designated as “Confidential” only to:

3 (i) the Receiving Party’s outside counsel of record, as well as employees of said
4 outside counsel of record to whom it is reasonably necessary to disclose this information provided
5 that the Receiving Party’s counsel of record has signed the “Acknowledgement and Agreement to
6 Be Bound” that is attached hereto as Exhibit A;

7 (ii) the Receiving Party’s officers, directors and employees (including House
8 Counsel) to whom disclosure is reasonably necessary for this litigation provided that the Receiving
9 Party has signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

10 (iii) Experts (as defined in this Order) of the Receiving Party to whom disclosure
11 is reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

13 (iv) the court and its personnel;

14 (v) court reporters and their staff, professional jury or trial consultants, mock
15 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
16 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (vi) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
20 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
21 separately bound by the court reporter and may not be disclosed to anyone except as permitted under
22 this Stipulated Protective Order.

23 (vii) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 5. STORAGE OF PROTECTED INFORMATION BY RECEIVING PARTY.

26 The recipient of any Protected Material provided under this Protective Order (including
27 copies or excerpts made thereof) shall maintain such information in a secure and safe area, and shall
28 exercise reasonable and proper care with respect to the storage, custody, use, and/or dissemination

1 of such information.

2 6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
3 LITIGATION.

4 If a Party is served with a subpoena or a court order issues in another litigation that compels
5 disclosure of any information or items designated in this action as “Confidential” that Party must:

6 (a) Promptly notify the Designating Party in writing. Such notification shall include a
7 copy of the subpoena or court order;

8 (b) Promptly notify, in writing, the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

11 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the
12 Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena
14 or court order shall not produce any information designated in this action as “Confidential” before
15 a determination by the court from which the subpoena or order issued, unless the Party has obtained
16 the Designating Party’s permission. The Designating Party shall bear the burden and expense of
17 seeking protection in that court of its confidential material — and nothing in these provisions should
18 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
19 directive from another court.

20 7. PROTECTED MATERIAL OF A NON-PARTY SOUGHT TO BE PRODUCED IN THIS
21 LITIGATION.

22 (a) The terms of this Order are applicable to information produced by a Non-Party in
23 this action and designated as “Confidential.” Such information produced by Non-Parties in
24 connection with this litigation is protected by the remedies and relief provided by this Order.
25 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
26 protections.

27 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
28 Party’s confidential information in its possession, and the Party is subject to an agreement with the

1 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

2 (i) Promptly notify, in writing, the Requesting Party and the Non-Party that
3 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

4 (ii) Promptly provide the Non-Party with a copy of the Stipulated Protective
5 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
6 the information requested; and

7 (iii) Make the information requested available for inspection by the Non-Party.

8 (c) If the Non-Party fails to object or seek a protective order from this Court within
9 fourteen (14) days of receiving the above notice and accompanying information, the Receiving Party
10 may produce the Non-Party’s confidential information responsive to the discovery request. If the
11 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in
12 its possession or control that is subject to the confidentiality agreement with the Non-Party before a
13 determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden
14 and expense of seeking protection in this Court of its Protected Material.

15 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
17 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
18 the Receiving Party must immediately (1) notify in writing the Designating Party of the
19 unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the Protected
20 Material, (3) inform the person or persons to whom unauthorized disclosures were made of all the
21 terms of this Order, and (4) request such person or persons to execute the “Acknowledgment and
22 Agreement to Be Bound” that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL.

25 When a Producing Party gives notice to Receiving Parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
28 is not intended to modify whatever procedure may be established in an e-discovery order that

1 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
2 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
3 information covered by the attorney-client privilege or work product protection, the parties may
4 incorporate their agreement in the stipulated protective order submitted to the court.

5 10. FINAL DISPOSITION.

6 (a) Within sixty (60) days after a final disposition of the action, which shall include entry
7 of final judgment and the exhaustion of all rights of appeal, or a dismissal of the action, a Receiving
8 Party shall either return to the Producing Party or destroy all Documents and things or transcripts of
9 depositions, together with all copies thereof, which have been designated “Confidential.”
10 Notwithstanding this provision, a Receiving Party or its Counsel are entitled to retain an archival
11 copy of all Documents and things or transcripts of depositions that have been designated as
12 “Confidential,” even if such materials contain Protected Material. Any such archival copies that
13 contain or constitute Protected Material remain subject to this Protective Order.

14 11. MISCELLANEOUS.

15 (a) Nothing in this Order abridges the right of any person to seek its modification by the
16 court in the future.

17 (b) By stipulating to entry of this Protective Order, no Party waives any right it otherwise
18 would have to object to disclosing or producing any information on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to
20 use in evidence of any of the material covered by this Protective Order.

21 (c) Without written permission from the Designating Party or a court order secured after
22 appropriate notice to all interested persons, a Party may not file in the public record in this action
23 any Protected Material. A Party that seeks to file under seal any Protected Material must fully
24 comply with Local Rule 141.

25 IT IS SO ORDERED.

26 Dated: April 26, 2021



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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STIPULATION

IT IS HEREBY STIPULATED by and among the parties, through their undersigned counsel,
that the foregoing Stipulated Protective Order may be entered in this action subject to the consent
of this Court.

Dated: March 19, 2021

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

By: /s/ James P. Wagoner
James P. Wagoner
Robert K. Landen
Attorneys for SPECIAL DISTRICT RISK
MANAGEMENT AUTHORITY

Dated: March 19, 2021

CLYDE & CO. US. LLP

By: /s/ Alexander Potente
Alexander Potente
Alec H. Boyd
Attorneys for MUNICH REINSURANCE
AMERICA, INC.

Dated: March 19, 2021

MUSICK, PEELER & GARRETT LLP

By: /s/ David A. Tartaglio
David A. Tartaglio
Attorneys for GENERAL REINSURANCE
CORPORATION

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [type or print full name] of
4 _____ [print or type
5 full address], hereby declare under penalty of perjury that I have read and am fully familiar with the
6 terms of the Protective Order entered in *Special District Risk Management Authority v. Munich*
7 *Reinsurance America, Inc.*, Case No. 2:20-CV-02404-TLN-CKD, and hereby agree to comply
8 with and be bound by the terms and conditions of said Order unless and until modified by further
9 Order of the Court.

10 I acknowledge that I am about to receive Confidential Information in said action, and hereby
11 certify my understanding that such information is being provided to me pursuant to the terms and
12 restrictions of the Protective Order. I understand that such information, and any copies I make of
13 any material containing “Confidential”, or any notes or other records that may be made regarding
14 any such information, shall not be disclosed to others, except other persons that are identified in or
15 have agreed to comply with and be bound by the terms of the Protective Order. I hereby consent to
16 the jurisdiction of said Court for purposes of enforcing this Order, even if such enforcement
17 proceedings occur after termination of this action.

18 I hereby appoint _____ [print or type full name]
19 of _____
20 _____
21 _____
22 _____ [print or type full address, telephone number, and email address] as my California
23 agent for service of process in connection with this action or any proceedings related to enforcement
24 of this Stipulated Protective Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed Name: _____

28 Signature: _____

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PROOF OF SERVICE

**SDRMA v. MUNICH REINSURANCE AMERICA, INC., ET AL.
Case No. 2:20-CV-02404-TLN-CKD**

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On March 19, 2021, I served true copies of the following document(s) described as **[PROPOSED] STIPULATED PROTECTIVE ORDER** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 19, 2021, at Fresno, California.

/s/ Marisela Taylor

Marisela Taylor

