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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

ENDURANCE RISK SOLUTIONS  
ASSURANCE COMPANY,

Plaintiff,

v.

TRAVELERS PROPERTY  
CASUALTY COMPANY OF  
AMERICA,

Defendant.

Case No. 2:22-cv-02304-KJM-KJN

The Hon. Kimberly J. Mueller  
Courtroom 3

The Hon. Kendall J. Newman  
Courtroom 25

**STIPULATED PROTECTIVE  
ORDER**

Complaint Filed: December 27, 2022

1           1. A. PURPOSES AND LIMITATIONS

2           Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge, as set forth  
11 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective  
12 Order does not entitle them to file confidential information under seal; Civil Local  
13 Rule 141 sets forth the procedures that must be followed and the standards that will  
14 be applied when a party seeks permission from the court to file material under seal.

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16           B. GOOD CAUSE STATEMENT

17           This action is likely to involve trade secrets, commercial, financial, medical,  
18 insurance, and/or personally identifiable information for which special protection  
19 from public disclosure and from use for any purpose other than prosecution of this  
20 action is warranted. Such confidential and proprietary materials and information  
21 consist of, among other things, confidential personal and privileged records of the  
22 parties' insureds collected and/or received in connection with the underlying  
23 insurance claim (including information implicating privacy rights of the parties'  
24 insureds and other third parties such as medical, financial, and personally  
25 identifiable information), information otherwise generally unavailable to the public,  
26 or which may be privileged or otherwise protected from disclosure under state or  
27 federal statutes, court rules, case decisions, or common law. Accordingly, to  
28 expedite the flow of information, to facilitate the prompt resolution of disputes over

1 confidentiality of discovery materials, to adequately protect information the parties  
2 are entitled and/or required to keep confidential, to ensure that the parties are  
3 permitted reasonable necessary uses of such material in preparation for and in the  
4 conduct of trial, to address their handling at the end of the litigation, and serve the  
5 ends of justice, a protective order for such information is justified in this matter. It  
6 is the intent of the parties that information will not be designated as confidential for  
7 tactical reasons and that nothing be so designated without a good faith belief that it  
8 has been maintained in a confidential, non-public manner, and there is good cause  
9 why it should not be part of the public record of this case.

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11 **2. DEFINITIONS**

12 2.1 Action: *Endurance Risk Solutions Assurance Company v. Travelers*  
13 *Property Casualty Company of America*, Case No. 2:22-cv-02304-KJM-KJN.

14 2.2 Challenging Party: a Party or Non-Party that challenges the  
15 designation of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
17 how it is generated, stored, or maintained) or tangible things that qualify for  
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
21 their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information  
23 or items that it produces in disclosures or in responses to discovery as  
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless  
26 of the medium or manner in which it is generated, stored, or maintained (including,  
27 among other things, testimony, transcripts, and tangible things), that are produced  
28 or generated in disclosures or responses to discovery in this matter.

1           2.7    Expert: a person with specialized knowledge or experience in a matter  
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
3 an expert witness or as a consultant in this Action.

4           2.8    House Counsel: attorneys who are employees of a party to this Action.  
5 House Counsel does not include Outside Counsel of Record or any other outside  
6 counsel.

7           2.9    Non-Party: any natural person, partnership, corporation, association,  
8 or other legal entity not named as a Party to this action.

9           2.10 Outside Counsel of Record: attorneys who are not employees of a  
10 party to this Action but are retained to represent or advise a party to this Action and  
11 have appeared in this Action on behalf of that party or are affiliated with a law firm  
12 which has appeared on behalf of that party, including support staff.

13          2.11 Party: any party to this Action, including all of its officers, directors,  
14 employees, consultants, retained experts, and Outside Counsel of Record (and their  
15 support staffs).

16          2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
17 Discovery Material in this Action.

18          2.13 Professional Vendors: persons or entities that provide litigation  
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
21 and their employees and subcontractors.

22          2.14 Protected Material: any Disclosure or Discovery Material that is  
23 designated as “CONFIDENTIAL.”

24          2.15 Receiving Party: a Party that receives Disclosure or Discovery  
25 Material from a Producing Party.

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1           3. SCOPE

2           The protections conferred by this Stipulation and Order cover not only  
3 Protected Material (as defined above), but also (1) any information copied or  
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
5 compilations of Protected Material; and (3) any testimony, conversations, or  
6 presentations by Parties or their Counsel that might reveal Protected Material.

7           Any use of Protected Material at trial shall be governed by the orders of the  
8 trial judge. This Order does not govern the use of Protected Material at trial.

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10           4. DURATION

11           Even after final disposition of this litigation, the confidentiality obligations  
12 imposed by this Order shall remain in effect until a Designating Party agrees  
13 otherwise in writing or a court order otherwise directs. Final disposition shall be  
14 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
15 or without prejudice; and (2) final judgment herein after the completion and  
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
17 including the time limits for filing any motions or applications for extension of time  
18 pursuant to applicable law.

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20           5. DESIGNATING PROTECTED MATERIAL

21           5.1     Exercise of Restraint and Care in Designating Material for Protection.  
22 Each Party or Non-Party that designates information or items for protection under  
23 this Order must take care to limit any such designation to specific material that  
24 qualifies under the appropriate standards. The Designating Party must designate for  
25 protection only those parts of material, documents, items, or oral or written  
26 communications that qualify so that other portions of the material, documents,  
27 items, or communications for which protection is not warranted are not swept  
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations  
2 that are shown to be clearly unjustified or that have been made for an improper  
3 purpose (e.g., to unnecessarily encumber the case development process or to impose  
4 unnecessary expenses and burdens on other parties) may expose the Designating  
5 Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it  
7 designated for protection do not qualify for protection, that Designating Party must  
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in  
10 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic  
16 documents, but excluding transcripts of depositions or other pretrial or trial  
17 proceedings), that the Producing Party affix at a minimum, the legend  
18 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
19 contains protected material. If only a portion or portions of the material on a page  
20 qualifies for protection, the Producing Party also must clearly identify the protected  
21 portion(s) (e.g., by making appropriate markings in the margins).

22 A Party or Non-Party that makes original documents available for  
23 inspection need not designate them for protection until after the inspecting Party has  
24 indicated which documents it would like copied and produced. During the  
25 inspection and before the designation, all of the material made available for  
26 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has  
27 identified the documents it wants copied and produced, the Producing Party must  
28 determine which documents, or portions thereof, qualify for protection under this

1 Order. Then, before producing the specified documents, the Producing Party must  
2 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.  
3 If only a portion or portions of the material on a page qualifies for protection, the  
4 Producing Party also must clearly identify the protected portion(s) (e.g., by making  
5 appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify  
7 the Disclosure or Discovery Material on the record, before the close of the  
8 deposition all protected testimony.

9 (c) for information produced in some form other than documentary and  
10 for any other tangible items, that the Producing Party affix in a prominent place on  
11 the exterior of the container or containers in which the information is stored the  
12 legend “CONFIDENTIAL.” If only a portion or portions of the information  
13 warrants protection, the Producing Party, to the extent practicable, shall identify the  
14 protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
16 failure to designate qualified information or items does not, standing alone, waive  
17 the Designating Party’s right to secure protection under this Order for such material.  
18 Upon timely correction of a designation, the Receiving Party must make reasonable  
19 efforts to assure that the material is treated in accordance with the provisions of this  
20 Order.

## 21 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
24 designation of confidentiality at any time that is consistent with the Court’s  
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
27 resolution process under Civil Local Rule 251 et seq.

28 6.3 The burden of persuasion in any such challenge proceeding shall be

1 on the Designating Party. Frivolous challenges, and those made for an improper  
2 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
3 parties), may expose the Challenging Party to sanctions. Unless the Designating  
4 Party has waived or withdrawn the confidentiality designation, all parties shall  
5 continue to afford the material in question the level of protection to which it  
6 is entitled under the Producing Party’s designation until the Court rules on the  
7 challenge.

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9 7. ACCESS TO AND USE OF PROTECTED MATERIAL

10 7.1 Basic Principles. A Receiving Party may use Protected Material that  
11 is disclosed or produced by another Party or by a Non-Party in connection with  
12 this Action only for prosecuting, defending, or attempting to settle this Action.  
13 Such Protected Material may be disclosed only to the categories of persons and  
14 under the conditions described in this Order. When the Action has been  
15 terminated, a Receiving Party must comply with the provisions of Section 13 below  
16 (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at  
18 a location and in a secure manner that ensures that access is limited to the  
19 persons authorized under this Order.

20 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
21 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
22 Receiving Party may disclose any information or item designated  
23 “CONFIDENTIAL” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
25 well as employees of said Outside Counsel of Record to whom it is reasonably  
26 necessary to disclose the information for this Action;

27 (b) the officers, directors, and employees (including House Counsel) of  
28 the Receiving Party to whom disclosure is reasonably necessary for this Action;



1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this Action and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the Court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional  
7 Vendors to whom disclosure is reasonably necessary for this Action and who have  
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a  
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in  
12 the Action to whom disclosure is reasonably necessary provided: (1) the deposing  
13 party requests that the witness sign the form attached as Exhibit A hereto; and (2)  
14 they will not be permitted to keep any confidential information unless they sign the  
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
16 agreed by the Designating Party or ordered by the Court. Pages of transcribed  
17 deposition testimony or exhibits to depositions that reveal Protected Material may  
18 be separately bound by the court reporter and may not be disclosed to anyone except  
19 as permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel,  
21 mutually agreed upon by any of the parties engaged in settlement discussions.

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23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
24 IN OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation  
26 that compels disclosure of any information or items designated in this Action as  
27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or order  
3 to issue in the other litigation that some or all of the material covered by the  
4 subpoena or order is subject to this Protective Order. Such notification shall include  
5 a copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be  
7 pursued by the Designating Party whose Protected Material may be affected.

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

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
18 PRODUCED IN THIS LITIGATION

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

24 (b) In the event that a Party is required, by a valid discovery request, to  
25 produce a Non-Party’s confidential information in its possession, and the Party is  
26 subject to an agreement with the Non-Party not to produce the Non-Party’s  
27 confidential information, then the Party shall:

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality agreement  
2 with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated  
4 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
5 specific description of the information requested; and

6 (3) make the information requested available for inspection by the Non-  
7 Party, if requested.

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

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17 10.UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1            11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
2            PROTECTED MATERIAL

3            When a Producing Party gives notice to Receiving Parties that certain  
4 inadvertently produced material is subject to a claim of privilege or other protection,  
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever  
7 procedure may be established in an e-discovery order that provides for production  
8 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and  
9 (e), insofar as the parties reach an agreement on the effect of disclosure of a  
10 communication or information covered by the attorney-client privilege or work  
11 product protection, the parties may incorporate their agreement in the stipulated  
12 protective order submitted to the Court.

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14            12. MISCELLANEOUS

15            12.1 Right to Relief. Nothing in this Order abridges the right of any person  
16 to seek its modification by the Court in the future.

17            12.2 Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order, no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in this  
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
21 ground to use in evidence of any of the material covered by this Protective Order.

22            12.3 Filing Protected Material. A Party that seeks to file under seal any  
23 Protected Material must comply with Civil Local Rule 141. Protected Material may  
24 only be filed under seal pursuant to a court order authorizing the sealing of the  
25 specific Protected Material at issue. If a Party's request to file Protected Material  
26 under seal is denied by the court, then the Receiving Party may file the information  
27 in the public record unless otherwise instructed by the court.

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1           13. FINAL DISPOSITION

2           After the final disposition of this Action, as defined in Section 4  
3 (DURATION), within 60 days of a written request by the Designating Party, each  
4 Receiving Party must return all Protected Material to the Producing Party or destroy  
5 such material. As used in this subdivision, “all Protected Material” includes all  
6 copies, abstracts, compilations, summaries, and any other format reproducing or  
7 capturing any of the Protected Material. Whether the Protected Material is returned  
8 or destroyed, the Receiving Party must submit a written certification to the  
9 Producing Party (and, if not the same person or entity, to the Designating Party) by  
10 the 60 day deadline that (1) identifies (by category, where appropriate) all the  
11 Protected Material that was returned or destroyed; and (2) affirms that the Receiving  
12 Party has not retained any copies, abstracts, compilations, summaries, or any other  
13 format reproducing or capturing any of the Protected Material. Notwithstanding this  
14 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
15 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant  
17 and expert work product, even if such materials contain Protected Material. Any  
18 such archival copies that contain or constitute Protected Material remain subject to  
19 this Protective Order as set forth in Section 4 (DURATION). To the extent the  
20 Parties are required by law to retain copies of Protected Materials in their Claim  
21 Files, such Protected Material shall remain subject to this Protective order as set  
22 forth in Section 4.

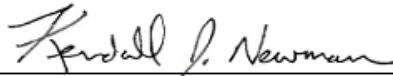
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1 **ORDER**

2 The court has reviewed the parties' stipulated protective order. (See ECF No.  
3 12.) The stipulation comports with the relevant authorities and the court's  
4 applicable local rule. See L.R. 141.1. The court APPROVES the protective order,  
5 subject to the following clarification. The Local Rules state that once an action is  
6 closed, "unless otherwise ordered, the court will not retain jurisdiction over  
7 enforcement of the terms of any protective order filed in that action." L.R. 141.1(f);  
8 see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D.  
9 Cal., Feb. 03, 2017) (noting that courts in the district generally do not agree to retain  
10 jurisdiction for disputes concerning protective orders after closure of the case).  
11 Thus, the court will not retain jurisdiction over this protective order once the case is  
12 closed.

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14 Dated: May 22, 2023

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16 KENDALL J. NEWMAN  
17 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Stipulated Protective Order that  
was issued by the United States District Court for the Eastern District of California  
on [date] in the case of *Endurance Risk Solutions Assurance Company v. Travelers  
Property Casualty Company of America*, Case No. 2:22-cv-02304-KJM-KJN. I  
agree to comply with and to be bound by all the terms of this Stipulated Protective  
Order, and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I  
will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order to any person or entity except in strict compliance with  
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Eastern District of California for the purpose of enforcing the terms of this  
Stipulated Protective Order, even if such enforcement proceedings occur after  
termination of this action. I hereby appoint \_\_\_\_\_ [print  
or type full name] of \_\_\_\_\_ [print or type  
full address and telephone number] as my California agent for service of process in  
connection with this action or any proceedings related to enforcement of this  
Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_