

1 SQUIRE, SANDERS & DEMPSEY L.L.P.  
 Ethan A. Miller (State Bar No. 155965)  
 2 David A. Gabianelli (State Bar No. 158170)  
 Ethan H. Seibert (State Bar No. 232262)  
 3 One Maritime Plaza, Suite 300  
 San Francisco, CA 94111-3492  
 4 Telephone: +1.415.954.0200  
 Facsimile: +1.415.393.9887  
 5 Email: eamiller@ssd.com  
 Email: dgabianelli@ssd.com  
 6 Email: eseibert@ssd.com

7 Attorneys for Defendants and Counter-Claimant  
 ZURICH AMERICAN INSURANCE COMPANY  
 8 and STEADFAST INSURANCE COMPANY

9 JOSEPH P. RUSSONIELLO  
 United States Attorney  
 10 JOANN M. SWANSON  
 Assistant United States Attorney  
 11 Chief, Civil Division  
 CHARLES M. O'CONNOR  
 12 JONATHAN U. LEE  
 Assistant United States Attorneys  
 13 Northern District of California  
 450 Golden Gate Avenue, Box 36055  
 14 San Francisco, California 94102  
 Telephone: (415) 436-6909  
 15 Facsimile: (415) 436-6748  
 Email: [Jonathan.Lee@USDOJ.gov](mailto:Jonathan.Lee@USDOJ.gov)

16 Attorneys for Plaintiff The UNITED STATES OF  
 17 AMERICA and Counter-Defendant The Presidio  
 Trust

18 **UNITED STATES DISTRICT COURT**  
 19 **NORTHERN DISTRICT OF CALIFORNIA**  
 20 **SAN FRANCISCO DIVISION**

22 UNITED STATES OF AMERICA,  
 23 Plaintiff,

24 vs.

25 ZURICH INSURANCE COMPANY,  
 ZURICH AMERICAN INSURANCE  
 26 COMPANY, and STEADFAST  
 INSURANCE COMPANY,

27 Defendants.  
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Case No. CV 08-5005-MMC

**STIPULATED PROTECTIVE ORDER**

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STEADFAST INSURANCE COMPANY,  
  
Counter-claimant,  
  
vs.  
  
THE PRESIDIO TRUST, a Wholly-Owned  
Corporation of the UNITED STATES OF  
AMERICA,  
  
Counter-defendant.

1           **1.       PURPOSES AND LIMITATIONS**

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following  
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords extends  
8 only to the limited information or items that are entitled under the applicable legal principles to  
9 treatment as confidential. The parties further acknowledge, as set forth in Section 10, below, that  
10 this Stipulated Protective Order creates no entitlement to file confidential information under seal;  
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards  
12 that will be applied when a party seeks permission from the court to file material under seal.

13           **2.       DEFINITIONS**

14           2.1    Party: any party to this action, including all of its officers, directors, employees,  
15 consultants, retained experts, and outside counsel (and their support staff).

16           2.2    Disclosure or Discovery Material: all items or information, regardless of the  
17 medium or manner generated, stored, or maintained (including, among other things, testimony,  
18 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
19 discovery in this matter.

20           2.3    “Confidential” Information or Items: information (regardless of how generated,  
21 stored or maintained) or tangible things that qualify for protection under standards developed  
22 under Federal Rule of Civil Procedure 26(c).

23           2.4    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
24 Producing Party.

25           2.5    Producing Party: a Party or non-party that produces Disclosure or Discovery  
26 Material in this action.

27           2.6    Designating Party: a Party or non-party that designates information or items that it  
28 produces in disclosures or in responses to discovery as “Confidential.”

1           2.7    Protected Material: any Disclosure or Discovery Material that is designated as  
2 “Confidential.”

3           2.8    Outside Counsel: attorneys who are not employees of a Party but who are retained  
4 to represent or advise a Party in this action.

5           2.9    House Counsel: attorneys who are employees of a Party.

6           2.10   Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
7 support staffs).

8           2.11   Expert: a person with specialized knowledge or experience in a matter pertinent to  
9 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
10 consultant in this action. This definition includes a professional jury or trial consultant retained in  
11 connection with this litigation.

12          2.12   Professional Vendors: persons or entities that provide litigation support services  
13 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
14 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

15          3.        **SCOPE**

16                The protections conferred by this Stipulation and Order cover not only Protected Material  
17 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
18 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
19 parties or counsel to or in Court or in other settings that might reveal Protected Material.

20          4.        **DURATION**

21                Even after the termination of this litigation, the confidentiality obligations imposed by this  
22 Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order  
23 otherwise directs.

24          5.        **DESIGNATING PROTECTED MATERIAL**

25                5.1    Exercise of Restraint and Care in Designating Material for Protection. Each Party  
26 or non-party that designates information or items for protection under this Order must take care to  
27 limit any such designation to specific material that qualifies under the appropriate standards. A  
28 Designating Party must take care to designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify – so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not  
3 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
4 designations are prohibited. Designations that are shown to be clearly unjustified, or that have  
5 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case  
6 development process, or to impose unnecessary expense and burdens on other parties), expose the  
7 Designating Party to sanctions.

8 If it comes to a Party’s or a non-party’s attention that information or items that it  
9 designated for protection do not qualify for protection, that Party or non-party must promptly  
10 notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
12 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
13 material that qualifies for protection under this Order must be clearly so designated before the  
14 material is disclosed or produced. The protections and procedures provided by this Order apply  
15 to all documents produced and designated “Confidential” before entry of this Order.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of depositions or other  
18 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” at the  
19 top or bottom of each page that contains protected material. If only a portion or portions of the  
20 material on a page qualifies for protection, the Producing Party also must clearly identify the  
21 protected portion(s) (e.g., by making the appropriate markings in the margins).

22 A Party or non-party that makes original documents or materials available for inspection  
23 need not designate them for protection until after the inspecting Party has indicated which  
24 material it would like copied and produced. After the inspecting Party has identified the  
25 documents it wants copied and produced, the Producing Party must determine which documents  
26 qualify for protection under this Order, then, before producing the specified documents, the  
27 Producing Party must affix the legend “CONFIDENTIAL” on each page that contains Protected  
28 Material. If only a portion or portions of the material on a page qualifies for protection, the

1 Producing Party also must clearly identify the protected portion(s) (e.g., by making the  
2 appropriate markings in the margins).

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
4 Party or non-party offering or sponsoring the testimony identify on the record, before the close of  
5 the deposition, hearing, or other proceeding, all protected testimony. When it is impractical to  
6 identify separately each portion of testimony that is entitled to protection, and when it appears  
7 that substantial portions of the testimony may qualify for protection, the Party or non-party that  
8 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or  
9 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the  
10 testimony as to which protection is sought. If a transcript is created for the deposition, pretrial or  
11 trial proceedings, the 20-day period begins to run upon release of the transcript to the Party or  
12 non-party offering or sponsoring the testimony. Only those portions of the testimony that are  
13 appropriately designated for protection within the 20 days shall be covered by the provisions of  
14 this Stipulated Protective Order.

15 Transcript pages containing Protected Material must be separately bound by the court  
16 reporter, who must affix to the top or bottom of each such page the legend “CONFIDENTIAL” as  
17 instructed by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

18 (c) for information produced in some form other than documentary, and for any other  
19 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
20 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only  
21 portions of the information or item warrant protection, the Producing Party, to the extent  
22 practicable, shall identify the protected portions.

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
24 designate qualified information or items as “Confidential” does not, standing alone, waive the  
25 Designating Party’s right to secure protection under this Order for such material. If material is  
26 appropriately designated as “Confidential” after the material was initially produced, the  
27 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
28 that the material is treated in accordance with the provisions of this Order.

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6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party’s designation.

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1           7.       **ACCESS TO AND USE OF PROTECTED MATERIAL**

2           7.1       Basic Principles. A Receiving Party may use Protected Material that is disclosed  
3 or produced by another Party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
5 to the categories of persons and under the conditions described in this Order. When the litigation  
6 has been terminated, a Receiving Party must comply with the provisions of section 11, below  
7 (FINAL DISPOSITION).

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

10          7.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
11 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may  
12 disclose any information or item designated CONFIDENTIAL only to:

13           (a)       the Receiving Party’s Outside Counsel of record in this action, as well as  
14 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
15 litigation;

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

18           (c)       experts (as defined in this Order) of the Receiving Party to whom disclosure is  
19 reasonably necessary for this litigation and who have signed the “Acknowledgment and  
20 Agreement to Be Bound by Protective Order” (Exhibit A);

21           (d)       the Court and its personnel;

22           (e)       court reporters and their staffs;

23           (f)       professional vendors to whom disclosure is reasonably necessary for this litigation  
24 and who have signed the “Acknowledgment and Agreement to Be Bound by Protective Order”  
25 (Exhibit A);

26           (g)       during their depositions, witnesses in the action to whom disclosure is reasonably  
27 necessary; pages of transcribed deposition testimony or exhibits to depositions that reveal  
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1 Protected Material must be separately bound by the court reporter and may not be disclosed to  
2 anyone except as permitted under this Stipulated Protective Order;

3 (h) the author of the document or the original source of the information.

4 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
5 **IN OTHER LITIGATION**

6 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
7 would compel disclosure of any information or items designated in this action as  
8 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by  
9 email or fax, if possible) immediately and in no event more than five (5) court days after  
10 receiving the subpoena or order. Such notification must include a copy of the subpoena or court  
11 order.

12 The Receiving Party also must immediately inform in writing the Party who caused the  
13 subpoena or order to issue in the other litigation that some or all the material covered by the  
14 subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a  
15 copy of this Order promptly to the Party in the other action that caused the subpoena or order to  
16 issue.

17 The purpose of imposing these duties is to alert the interested parties to the existence of  
18 this Order and to afford the Designating Party in this case an opportunity to try to protect its  
19 confidentiality interests in the court from which the subpoena or order issued. The Designating  
20 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential  
21 material – and nothing in these provisions should be construed as authorizing or encouraging a  
22 Receiving Party in this action to disobey a lawful directive from another court.

23 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
25 Material to any person or in any circumstance not authorized under this Order, the Receiving  
26 Party must immediately (a) notify in writing the Designating Party of the unauthorized  
27 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the  
28 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and

1 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound  
2 by Protective Order” that is attached hereto as Exhibit A.

3 10. **FILING PROTECTED MATERIAL**

4 Without written permission from the Designating Party or a Court order secured after  
5 appropriate notice to all interested persons, a Party may not file in the public record in this action  
6 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
7 with Civil Local Rule 79-5.

8 11. **FINAL DISPOSITION**

9 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
10 after the final termination of this action or any appeal(s) therefrom, each Receiving Party must  
11 return all Protected Material to the Producing Party or destroy the Protected Material. As used in  
12 this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries  
13 or any other form of reproducing or capturing any of the Protected Material. Whether the  
14 Protected Material is returned or destroyed, the Receiving Party must submit a written  
15 certification to the Producing Party (and, if not the same person or entity, to the Designating  
16 Party) by the sixty-day deadline that identifies (by category, where appropriate) all the Protected  
17 Material that was returned or destroyed and that affirms that the Receiving Party has not retained  
18 any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of  
19 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
20 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
21 work product, even if such materials contain Protected Material. Any such archival copies that  
22 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
23 Section 4 (DURATION), above.

24 12. **MISCELLANEOUS**

25 12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to  
26 seek its modification by the Court in the future.

27 12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Order, no  
28 Party waives any right it otherwise would have to object to disclosing or producing any



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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, \_\_\_\_\_ [print or type full name], 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 Northern District of California on \_\_\_\_\_, 2010 in the case of *United States of America v. Zurich Ins. Co., et al.*, Case No. CV 08-5005-MMC. 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 Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern 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.

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

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

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]