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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CHARTIS SPECIALTY
INSURANCE COMPANY, an Illinois
corporation, for itself, and as subrogee
of Whittaker Corporation; and
WHITTAKER CORPORATION, a
Delaware corporation,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. CV-13-1527 EMC
~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

Judge: Hon. Edward M. Chen

1 **STIPULATED PROTECTIVE ORDER**

2 It is hereby ordered that this Stipulated Protective Order shall apply with respect to
3 certain documents and other information produced and/or disclosed in connection with the
4 above-captioned litigation (“the Litigation”).

5 **1. Scope of Order.** This Stipulated Protective Order (“the Protective Order”)
6 governs the use and handling of confidential documents, electronic information in any form
7 (including embedded data and metadata), testimony, interrogatory responses and other
8 information, including all copies, excerpts and summaries thereof (collectively, the
9 “Protected Material”) supplied by any party (including third parties) in the Litigation.
10 Protected Material supplied in this Litigation shall be used only for the purpose of this
11 Litigation, and not for any business, competitive, personal, private, public or other purpose
12 whatsoever.

13 **2. Designation of Protected Material.** Any party (including a third party)
14 may in good faith designate as “**Protected**” any material that it supplies in this Litigation
15 which contains trade secrets, non-public research and analysis, competitively sensitive
16 financial information, commercial information, internal strategy or strategic planning
17 information, or internal communications regarding the Protected Material; or other
18 information for which a good faith claim of need for protection from disclosure can be
19 made under applicable law. The designations will be made in conformance with Paragraph
20 6 of this Protective Order. If a document, or other material or testimony related thereto, is
21 inadvertently disclosed without being marked as Protected Material in accordance with
22 Paragraph 6 or if such disclosure occurred prior to the execution of this Protective Order,
23 the failure to so mark the document, or other material or testimony related thereto, shall not
24 be deemed a waiver by the supplying party of its ability to designate such information as
25 Protected Material, provided that the failure to mark the document, or other material or
26 testimony related thereto, is brought to the attention of the receiving Party within a

1 reasonable time after the original disclosure of the Protected Material in this Litigation. In
2 such instance, the supplying party must produce another copy of the Protected Material in
3 conformance with Paragraph 6. If the receiving party has disclosed the information to
4 persons prior to being notified that the information is Protected Material, such disclosure
5 will not be deemed a violation of this Protective Order, but the receiving party shall advise
6 such persons that the Protected Material is subject to the terms of this Protective Order and
7 may not be disclosed or used other than as set forth in this Protective Order.

8 **3. Persons Who May Access Protected Material.** Absent written consent
9 from the supplying party or unless otherwise directed by the Court after reasonable advance
10 notice, Protected Material may be disclosed only to the following persons:

- 11 a. Employees, officers, and directors of the named parties to this
12 lawsuit who have a need to review the Protected Material in
13 connection with the Litigation;
- 14 b. Counsel of record for the parties and in-house counsel who are not
15 regular employees of a party but are retained on behalf of any of the
16 parties by their counsel to assist in preparation of this case
- 17 c. Actual witnesses during the trial or any hearing in this Litigation or
18 actual deponents during a deposition in this Litigation and the
19 attorneys representing any third party at the deposition, hearing, or
20 trial;
- 21 d. Outside experts, investigators, or consultants who are retained on
22 behalf of any of the parties by counsel to assist in the preparation of
23 this case;
- 24 e. Outside photocopying, graphic production services or litigation
25 support services employed by the parties' counsel to assist in this
26 Litigation, and computer services personnel performing duties in
27 relation to a computerized litigation system;

- 1 f. The Court, court reporters, videographers, stenographers, and court
2 personnel; and
- 3 g. The direct staff of, and any personnel employed or retained by any of
4 the foregoing persons, provided that such persons are actively
5 involved in assisting with the prosecution or defense of this
6 Litigation.

7 Any person who obtains access to Protected Material, as permitted by this
8 Protective Order, may make copies, duplicates, extracts, summaries or descriptions of the
9 information contained therein or any portion thereof. All copies, duplicates, extracts,
10 summaries, or descriptions derived from Protected Material shall be subject to the terms of
11 this Protective Order and shall be marked to the same extent and manner as originals.

12 **4. Application of this Protective Order to Persons With Access to**

13 **Protected Material.** Each person given access to Protected Material shall be advised that
14 the Protected Material is being disclosed pursuant to and subject to the terms of this
15 Protective Order and may not be disclosed or used other than as set forth in this Protective
16 Order. In addition, Protected Material shall not be left in the possession of persons
17 described in Paragraph 3(c) without the written consent of the Producing Party. Before any
18 person described in Paragraph 3(d) or (e), or any person described in Paragraph 3(g) who is
19 employed or retained by persons described in Paragraph 3(d) or (e), is given access to
20 Protected Material, that person must read and agree in writing, by signing an
21 acknowledgement in the form attached as Exhibit A, to be bound by the provisions of this
22 Protective Order. Any such signed acknowledgement shall be retained during the course of
23 this Litigation by the counsel who obtained the acknowledgment. All persons who review
24 Protected Material pursuant to this Protective Order agree to the jurisdiction of this Court
25 over their person for the purpose of enforcement of this Order.

26 **5. Filing Documents Containing Protected Material.** In the event that a

27 party wishes to use or reference any Protected Material in any pleading or document filed

1 with the Court in this Litigation, the party shall follow the procedures set forth in Civil L.R.
2 79-5 and General Order 62 which are hereby incorporated by reference, if applicable.

3 **6. Production of Documents and Other Material Containing Protected**

4 **Material.** The designation of Protected Material for the purposes of this Protective Order
5 shall be made in the following manner:

- 6 a. In the case of documents and written discovery responses, by
7 affixing the legend “Protected Material – Do Not Release” to each
8 page or .TIFF image containing Protected Material.
- 9 b. In the case of electronically stored information (“ESI”) in any form
10 (including data and metadata), by designating the ESI as “Protected”
11 in a cover letter accompanying the production of the ESI. Where
12 feasible, counsel for the supplying party will also mark the disc, tape
13 or other electronic media on which the ESI is produced with the
14 appropriate designation. If a party reduced Protected ESI to
15 hardcopy form or .TIFF image format, it shall mark the hardcopy or
16 each .TIFF image with the appropriate designation. Whenever any
17 Protected ESI is copied, all copies shall be marked with the
18 appropriate designation.
- 19 c. In the case of depositions or other pretrial testimony: (i) by a
20 statement on record, by counsel, at the time of such disclosure, or (ii)
21 by written notice sent to all counsel of record for the parties within
22 ten business days after receipt of the transcript of the deposition.
23 Until said ten day period has expired, all transcripts shall be treated
24 as Protected Material. To maintain the confidentiality of any
25 deposition testimony or exhibits designated as Protected Material in
26 accordance with the terms of this Protective Order, the court reporter
27 who transcribes the deposition testimony shall make reasonable

1 arrangements and measures, which may include the marking of
2 transcript pages, covers, or exhibits to indicate that Protected
3 Material is contained therein. Any additional cost incurred as a result
4 of marking the transcript pages, covers, or exhibits shall be the
5 responsibility of the party requesting the marking.

- 6 d. To the extent that a person described in Paragraph 3 creates,
7 develops, establishes or otherwise maintains, on any computer,
8 network, disc, tape or other digital or analog machine-readable
9 device, any information, files, databases or programs that contain
10 Protected Material, such person shall take all necessary steps to
11 ensure that access to any Protected Material is restricted to those
12 persons who, by the terms of this Protective Order, are allowed to
13 access the Protected Material.
- 14 e. The inadvertent failure to stamp a document as “Protected” shall not
15 by itself be deemed a waiver of a claim of confidentiality.
- 16 f. The supplying party shall give written notice to the party receiving
17 the Protected Material promptly after the omission is discovered, and
18 the receiving party shall then treat those materials as Protected
19 Material in accordance with this Protective Order.
- 20 g. Notwithstanding the foregoing, to the extent a party desires to make a
21 claim of protected status under this Protective Order related to
22 information produced or otherwise provided to a Testifying Expert
23 before that information was designated as Protected Material, that
24 Party may do so only upon a showing of good cause. In determining
25 if good cause exists, the Court shall consider, among other relevant
26 factors, the prejudice to the receiving Party caused by the claim of
27 privilege. If a claim of protected status is sustained as to Protected

1 Material produced or otherwise provided to a Testifying Expert, and
2 the confidentiality claim relates to a document that the Testifying
3 Expert relied on, then the Testifying Expert shall have 30 days after
4 the confidentiality claim has been resolved to produce a revised
5 report. If a revised report is produced, the prior report shall be
6 treated as work-product pursuant to Federal Rule of Civil Procedure
7 26 and all copies shall be returned to the producing Party. Such prior
8 report may not be used for any purpose, including for the purposes of
9 impeachment.

10 **7. Use of Protected Material at Depositions.** No person shall attend
11 portions of depositions in which Protected Material is referred to unless such person is an
12 authorized recipient of Protected Material pursuant to this Protective Order.

13 **8. Use of Protected Material at Trial or Hearing.** If any party intends to use
14 Protected Material in their case in chief at trial or hearing, counsel shall raise the issues
15 before the Final Pretrial Conference or at such other time as designated by the Court. The
16 restrictions, if any, that will govern the use of Protected Material at trial or hearings will be
17 determined at a later date by the Court.

18 **9. Previously Obtained Material.** Nothing in this Protective Order shall
19 preclude any party to this Protective Order or its attorneys from showing a document
20 designated as Protected Material to an individual who prepared, authored, received or
21 reviewed the material prior to the filing of this Litigation.

22 **10. Exceptions.** The “Protected Material” shall not include, and the receiving
23 party shall not be under any obligation to maintain in confidence or not use, any
24 information (or any portion thereof) disclosed to it by another source to the extent that such
25 information:

- 26 a. is in the public domain at the time of disclosure;
- 27

- b. is required by statute, regulation or permit to be filed with a state or federal environmental agency to demonstrate compliance with a regulation;
- c. following the disclosure, becomes generally known or available through no act or omission on the part of the receiving party;
- d. is known, or becomes known, to the receiving party from a source other than the supplying party; or
- e. is legally required to be disclosed by judicial or other governmental action outside of this Litigation; provided, however, that prompt notice of such judicial or other governmental action shall have been given to the supplying party and that the supplying party shall be afforded the opportunity (consistent with the legal obligations of the receiving party) to exhaust all reasonable legal remedies to maintain the material in confidence.

Protected Material shall not be deemed to fall within the exceptions of subparts (a) to (e) above merely because it is included in a document which also includes information that does fall within such exceptions if the Protected Material constitutes the whole or a material part of the document.

11. Modification of the Protective Order. This Protective Order shall not prevent a Party from applying to the Court for relief from it, or from applying to the Court for further or additional protective orders, or from agreeing with another party to a modification of this Protective Order, subject to the approval of the Court.

12. Challenging Protected Material Determinations.

- a. **Timing of Challenges.** Any party or third party may challenge a designation of Protected Material. Unless a prompt challenge to a designating party's designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a

1 significant disruption or delay of the Litigation, a party does not
2 waive its right to challenge a designation by electing not to mount a
3 challenge promptly after the original designation is disclosed.

4 b. Meet and Confer. The challenging party shall initiate the dispute
5 resolution process by providing written notice of each designation it
6 is challenging and describing the basis for each challenge. To avoid
7 ambiguity as to whether a challenge has been made, the written
8 notice must recite that the challenge to protected status is being made
9 in accordance with this specific paragraph of the Protective Order.
10 The parties shall attempt to resolve each challenge in good faith and
11 must begin the process by conferring directly within 21 days of the
12 date of service of notice. In conferring, the challenging party must
13 explain the basis for its belief that the protected designation was not
14 proper and must give the designating party an opportunity to review
15 the designated material, to reconsider the circumstances, and, if no
16 change in designation is offered, to explain the basis for the chosen
17 designation. A challenging party may proceed to the next stage of
18 the challenge process only if it has engaged in this meet and confer
19 process first or establishes that the designating party is unwilling to
20 participate in the meet and confer process in a timely manner.

21 c. Judicial Intervention. If the parties cannot resolve a challenge
22 without Court intervention, the parties will comply with the dispute
23 resolution procedures set forth in Judge Chen’s Civil Standing Order
24 on Discovery which is incorporated herein by reference.

25 d. Protective Orders. Although the burden of persuasion in moving for
26 any Protective Order shall be on the designating party, frivolous
27 oppositions, and those made for an improper purpose (e.g., to harass
28

1 or impose unnecessary expenses and burdens on other parties) may
2 expose the challenging party to sanctions. All parties shall continue
3 to afford the material in question the level of protection to which it is
4 entitled under the producing party's designation until the Court rules
5 on the challenge.

6 e. Third Parties. Any third party whose Protected Material is at issue
7 may appear, by counsel, to defend the designations as Protected
8 Material, or to enforce the terms of this Order.

9 **13. Compliance with Order Is Not an Admission.** A person's compliance
10 with the terms of this Order shall not operate as an admission that any particular document
11 is or is not (a) confidential, (b) privileged, or (c) admissible in evidence at trial.

12 **14. Third Party Requests for Protected Material.** If any person receiving
13 Protected Material covered by this Protective Order is subpoenaed in another action or
14 proceeding, served with a document demand, or is otherwise requested to provide Protected
15 Material covered by this Protective Order, such person receiving the subpoena, document
16 demand, or request shall give prompt written notice to counsel for the supplying Party and
17 shall, to the extent permitted by law, withhold production of the Protected Material. The
18 receiving party shall further provide the supplying party prompt notice of any intent to
19 disclose Protected Material over the supplying party's objection.

20 **15. Court Retains Jurisdiction.** This Protective Order shall survive
21 termination of this Litigation. The Court expressly retains jurisdiction over this action for
22 the enforcement of the provisions of this Protective Order following the final resolution of
23 this Litigation.

24 **16. Return or Destruction of Protected Material.** Within 90 days of
25 termination of this Litigation, including all available appeals, non-Federal parties shall
26 return Protected Material, and any copies thereof, to the supplying Party or shall destroy the
27 material and certify the date of their destruction. This paragraph does not apply to notes,

1 pleadings, depositions or other documents in which Protected Material is referred to or
2 quoted, but only as to the Protected Material itself. The parties acknowledge that laws or
3 regulations applicable to the retention of federal records may restrict the extent to which the
4 United States may return Protected Material.

5 **17. Parties May Use Their Own Protected Material.** Nothing in this Order
6 shall restrict a party's use or disclosure of its own Protected Material in any way.

7 **18. Violation of the Protective Order.** The Court shall have discretion to
8 impose sanctions, including reasonable monetary fines, for violations of the provisions of
9 this Protective Order governing the protection of material that is designated Protected.

10 **19. Confidential or Protected Material From Prior Litigation.**
11 Notwithstanding the foregoing, discovery materials designated as "Confidential" or
12 "Protected" in *Steadfast Insurance Company v. United States*, Case No. CV-06-4686-AHM
13 (C.D. Cal.) and *American International Specialty Lines Insurance Company v. United*
14 *States of America*, Case No. CV-09-01734-AHM (C.D. Cal) shall be deemed Protected
15 Material under this Protective Order without any additional action being taken and the use
16 of such Protected Material in this Litigation will be governed by this Protective Order.

17 **20. The parties agree to meet and confer following the close of factual**
18 **discovery to evaluate whether revisions are required to this Protective Order. This**
19 **Protective Order is entered without prejudice to the right of any party to seek revision**
20 **to the Protective Order for good cause shown.**

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 DATED: September 10, 2013

WOOD, SMITH, HENNING & BERMAN
LLP

23
24 By: s/ David F. Wood (permission pending)
DAVID F. WOOD
25 GREGORY P. ARAKAWA

26 Attorneys for Plaintiff,
27 CHARTIS SPECIALTY INSURANCE
28 COMPANY

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DATED: September 10, 2013

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WHITTAKER CORPORATION

DATED: September 10, 2013

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JOHN THOMAS H. DO
Environment & Natural Resources Division
U.S. Department of Justice

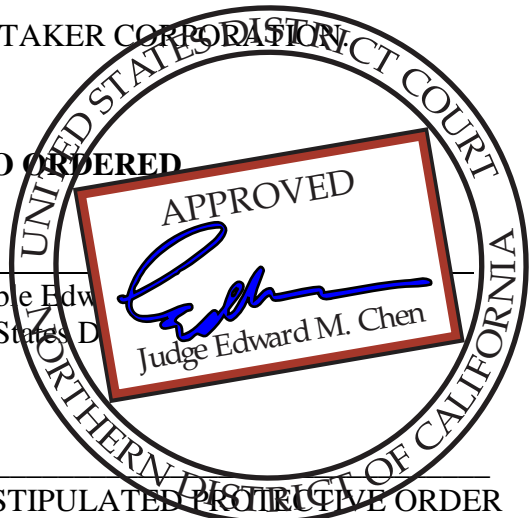
Attorneys for Defendant,
UNITED STATES OF AMERICA

*Filer attests that concurrence in the filing has been obtained from counsel for CHARTIS
SPECIALTY INSURANCE COMPANY and WHITTAKER CORPORATION

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: September ²⁵____, 2013

Honorable Edw
United States D



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
 4 _____ [print or type full address], declare under penalty of perjury
 5 that I have read in its entirety and understand the Stipulated Protective Order that was
 6 issued by the United States District Court for the Northern District of California on [date] in
 7 the case of **CHARTIS SPECIALTY INSURANCE COMPANY and WHITTAKER**
 8 **CORPORATION v. UNITED STATES OF AMERICA, Case No. CV-13-1527**
 9 **EMC**. I agree to comply with and to be bound by all the terms of this Stipulated Protective
 10 Order and I understand and acknowledge that failure to so comply could expose me to
 11 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
 12 disclose in any manner any information or item that is subject to this Stipulated Protective
 13 Order to any person or entity except in strict compliance with the provisions of this
 14 Stipulated Protective Order. I also agree to return any information subject to this
 15 Stipulated Protective Order that come into my possession, and documents or things that I
 16 have prepared relating thereto, to counsel for the party by whom I am employed or retained.

17 I further agree to submit to the jurisdiction of the United States District Court for the
 18 Northern District of California for the purpose of enforcing the terms of this Stipulated
 19 Protective Order, even if such enforcement proceedings occur after termination of this
 20 Litigation.

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

25 Date: _____ City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____