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 Gordon Trucking, Inc. and
 7 Crossclaimant American International
 Specialty Lines Insurance Company
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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12 COLUMBIA CASUALTY COMPANY,
 13 an Illinois corporation,

14 Plaintiff,

15 v.

16 GORDON TRUCKING, INC., a
 Washington corporation, and DOES 1
 17 through 10,

18 Defendants.

19 GORDON TRUCKING, INC., a
 20 Washington corporation, and DOES 1
 through 10,

21 Counterclaimant,

22 v.

23 COLUMBIA CASUALTY COMPANY,
 24 an Illinois corporation; AMERICAN
 INTERNATIONAL SPECIALTY LINES
 25 INSURANCE COMPANY, an Alaska
 corporation; GREAT WEST CASUALTY
 26 COMPANY, a Nebraska corporation; and
 DOES 1 through 10,

27 Counterdefendants.
 28

No. CV-09-05441-LHK

**STIPULATION AND
~~PROPOSED~~ ORDER TO
 WITHDRAW UNDISPUTED
 FACT NO. 49 AND FILE
 AMENDED JOINT EXHIBIT
 LIST**

Date: June 20, 2011
 Time: 9:00 a.m.
 Courtroom: Hon. Lucy H. Koh
 5th Floor
 Courtroom 4

1
2 AMERICAN INTERNATIONAL
3 SPECIALTY LINES INSURANCE
4 COMPANY, an Alaska corporation,

5
6 Crossclaimant,

7
8 v.

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10 COLUMBIA CASUALTY COMPANY,
11 an Illinois corporation,

12
13 Crossdefendant.
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16 This Stipulation is made by and between defendant and
17 counterclaimant Gordon Trucking, Inc. (“GTI”), cross-claimant American
18 International Specialty Lines Insurance Company (“AISLIC”), and plaintiff and
19 cross-defendant Columbia Casualty Company (“Columbia”), with reference to the
20 following facts:

21
22 1. On May 25, 2011, pursuant to the Court’s Guidelines for Final Pretrial
23 Conference in Bench Trials, the parties filed their Joint Pretrial Statement and
24 [Proposed] Order (“Joint Statement”), including the parties’ joint trial exhibit list.

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26 2. The Joint Statement contained an undisputed fact, Fact No. 49, which
27 stated, “Prior to the high/low settlement agreement that the parties entered into on
28 September 18, 2009, Bianchi’s settlement demand had been as high as \$100 million
and had never been lower than \$24 million.” Joint Statement at 10:11–13.

1 3. Columbia now wishes to withdraw its agreement to Fact No. 49 based
2 on its contention that there are documents previously produced to Columbia but not
3 included in the joint trial exhibit list that Columbia contends show that there was a
4 lower settlement demand in the amount of \$15 million.

5 4. Gordon Trucking and AISLIC contend that Fact No. 49 is correct as
6 written, that any documents referencing a demand of \$15 million are based on
7 clerical error, and that there is substantial evidence supporting the fact that the

1 lowest settlement demand by Bianchi prior to the High/Low agreement was \$24
2 million. In order to more fully respond to Columbia's contention, Gordon Trucking
3 and AISLIC have identified additional documents beyond those listed in the joint
4 trial exhibit list which they believe confirm that \$24 million was the lowest demand.

5 5. In light of the now-disputed nature of this previously undisputed fact,
6 the parties desire to offer additional exhibits related to this issue at trial, and have
7 agreed that such exhibits may be admitted into evidence and should be added to the
8 exhibit list as reflected in the Amended Joint Trial Exhibit List lodged concurrently
9 herewith.

10 Accordingly, IT IS HEREBY STIPULATED that:

- 11 1. Undisputed Fact No. 49 may be withdrawn.
- 12 2. Exhibits 111–119 and 201–205 in the Amended Joint Trial Exhibit
13 List lodged concurrently herewith shall be admissible at trial.

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16 BINGHAM MCCUTCHEN LLP

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18 By: /s/ Frank Kaplan
Frank Kaplan (SBN 50859)
19 Attorneys for Defendant and
Counterclaimant Gordon Trucking, Inc.
20 And Crossclaimant American International
Specialty Lines Insurance Company

21
22 ALVARADO SMITH

23 By: /s/ Patrick A. Cathcart
Patrick A. Cathcart
24 Attorneys for Plaintiff, Counterdefendant and
25 Crossdefendant Columbia Casualty Company

26
27 I, Frank Kaplan, hereby attest, pursuant to N.D. Cal. General Order
28 No. 45, that the concurrence to the filing of this document has been obtained from

1 each signatory hereto.

2 DATED:

BINGHAM MCCUTCHEN LLP

3
4 By: /s/ Frank Kaplan
5 Frank Kaplan (SBN 50859)
6 Attorneys for Defendant and
7 Counterclaimant Gordon Trucking, Inc.
8 And Crossclaimant American International
9 Specialty Lines Insurance Company

10 ~~PROPOSED~~ ORDER

11 Pursuant to the Stipulation above, Undisputed Fact No. 49 is
12 withdrawn, and the Amended Joint Trial Exhibit List may be filed.

13 IT IS SO ORDERED.

14 DATED: June 15, 2011

15 
16 UNITED STATES DISTRICT JUDGE