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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

STARLINE WINDOWS INC., a  
Washington Corporation,

Plaintiff,

v.

INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA, an  
Illinois Corporation,

Defendant.

Case No. 3:21-cv-00578-TWR-DEB

**ORDER GRANTING JOINT  
MOTION AND ENTERING  
STIPULATED PROTECTIVE  
ORDER**

**DKT. NO. 16**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive and/or other valid business reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost,

1 price, marketing, or other commercial information, as is contemplated by Federal  
2 Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the  
3 confidentiality of such materials as much as practical during the litigation.

4 THEREFORE:

5 **DEFINITIONS**

6 1. The term "confidential information" will mean and include  
7 information contained or disclosed in any materials, including documents, portions  
8 of documents, answers to interrogatories, responses to requests for admissions, trial  
9 testimony, deposition testimony, and transcripts of trial testimony and depositions,  
10 including data, summaries, and compilations derived therefrom that is deemed to  
11 be confidential information by any party to which it belongs, regardless of how it is  
12 generated, stored, or maintained.

13 2. The term "counsel" will mean outside counsel of record, house counsel,  
14 and other attorneys, paralegals, secretaries, and other support staff employed in the  
15 law firms representing the parties to this action, which currently are the law firms  
16 identified below:

- 17 • Procopio, Cory, Hargreaves & Savitch, LLP
- 18 • Heffernan Law Group PLLC
- 19 • Nicolaides Fink Thorpe Michaelides Sullivan LLP

20 3. The term "designating party" will mean a party or non-party that  
21 designates information or items that it produces in disclosures or in responses to  
22 discovery as "CONFIDENTIAL."

23 4. The term "expert" will mean a person with specialized knowledge or  
24 experience in a matter pertinent to the litigation who has been retained by a Party  
25 or its Counsel to serve as an expert witness or as a consultant in this action.

26 5. The term "house counsel" will mean attorneys who are employees of  
27 a party to this action, including their support staffs. House counsel does not include  
28 outside counsel of record or any other outside counsel.

1           6.     The term "materials" will include, but is not limited to: documents;  
2 correspondence; memoranda; bulletins; blueprints; specifications; files; manuals;  
3 customer lists or other material that identify customers or potential customers; price  
4 lists or schedules or other matter identifying pricing; minutes; telegrams; letters;  
5 statements; cancelled checks; contracts; invoices; drafts; books of account;  
6 worksheets; notes of conversations; desk diaries; appointment books; expense  
7 accounts; recordings; photographs; motion pictures; compilations from which  
8 information can be obtained and translated into reasonably usable form through  
9 detection devices; sketches; drawings; notes (including laboratory notebooks and  
10 records); reports; instructions; disclosures; other writings; and models, prototypes,  
11 and other physical objects.

12           7.     The term “non-party” will mean any natural person, partnership,  
13 corporation, association, or other legal entity not named as a Party to this action.

14           8.     The term “outside counsel of record” will mean attorneys who are not  
15 employees of a party to this action but are retained to represent or advise a party to  
16 this action and have appeared in this action on behalf of that party or are affiliated  
17 with a law firm which has appeared on behalf of that party, including their support  
18 staffs.

19           9.     The term “party” will mean any party to this action, including all of its  
20 officers, directors, employees, claim administrators, consultants, retained experts,  
21 and outside counsel of record.

22           10.    The term “producing party” will mean any party or non-party that  
23 produces material in this action.

24           11.    The term “protected material” will mean any materials, answers to  
25 interrogatories, responses to requests for admission, trial testimony, deposition  
26 testimony, and transcripts of trial testimony and depositions, or information that the  
27 producing party designates as "CONFIDENTIAL" or "CONFIDENTIAL - FOR  
28 COUNSEL ONLY."



1 to be most sensitive by the party, including but not limited to  
2 trade secret or other confidential research, development,  
3 financial or other commercial information.

4 15. In the event the producing party elects to produce materials for  
5 inspection, no marking need be made by the producing party in advance of the initial  
6 inspection. For purposes of the initial inspection, all materials produced will be  
7 considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated  
8 as such pursuant to the terms of this Order. Thereafter, upon selection of specified  
9 materials for copying by the inspecting party, the producing party must, within a  
10 reasonable time prior to producing those materials to the inspecting party, mark the  
11 copies of those materials that contain confidential information with the appropriate  
12 confidentiality marking.

13 16. Whenever a deposition taken on behalf of any party involves a  
14 disclosure of confidential information of any party:

15 a. The deposition or portions of the deposition must be designated  
16 as containing confidential information subject to the provisions  
17 of this Order; such designation must be made on the record  
18 whenever possible, but a party may designate portions of  
19 depositions as containing confidential information after  
20 transcription of the proceedings; [A] party will have until  
21 fourteen (14) days after receipt of the deposition transcript to  
22 inform the other party or parties to the action of the portions of  
23 the transcript to be designated "CONFIDENTIAL" or  
24 "CONFIDENTIAL - FOR COUNSEL ONLY."

25 b. The disclosing party will have the right to exclude from  
26 attendance at the deposition, during such time as the confidential  
27 information is to be disclosed, any person other than the  
28 deponent, counsel (including their staff and associates), the

1 court reporter, and the person(s) agreed upon pursuant to  
2 paragraph 8 below; and

- 3 c. The originals of the deposition transcripts and all copies of the  
4 deposition must bear the legend "CONFIDENTIAL" or  
5 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,  
6 and the original or any copy ultimately presented to a court for  
7 filing must not be filed unless it can be accomplished under seal,  
8 identified as being subject to this Order, and protected from  
9 being opened except by order of this Court.

10 17. Each party or non-party that designates information or items for  
11 protection under this Order must take care to limit any such designation to specific  
12 material that qualifies under the appropriate standards. The designating party must  
13 designate for protection only those parts of material, documents, items, or oral or  
14 written communications that qualify – so that other portions of the material,  
15 documents, items, or communications for which protection is not warranted are not  
16 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, routinized  
17 designations, or designations that are shown to be clearly unjustified or that have  
18 been made for an improper purpose (e.g., to unnecessarily encumber or delay the  
19 case development process or to impose unnecessary expenses and burdens on other  
20 parties) are prohibited.

21 **ACCESS TO AND USE OF PROTECTED MATERIAL**

22 18. All confidential information designated as "CONFIDENTIAL" or  
23 "CONFIDENTIAL - FOR COUNSEL ONLY" must not be disclosed by the  
24 receiving party to anyone other than those persons designated within this Order and  
25 must be handled in the manner set forth below and, in any event, must not be used  
26 for any purpose other than in connection with this litigation, unless and until such  
27 designation is removed either by agreement of the parties, or by order of the Court.

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1           19. Information designated "CONFIDENTIAL - FOR COUNSEL  
2 ONLY" must be viewed only by the receiving party, counsel (as defined in  
3 paragraph 2) of the receiving party, and by independent experts under the conditions  
4 set forth in this Paragraph. The right of any independent expert to receive any  
5 confidential information will be subject to the advance approval of such expert by  
6 the producing party or by permission of the Court. The party seeking approval of  
7 an independent expert must provide the producing party with the name and  
8 curriculum vitae of the proposed independent expert in advance of providing any  
9 confidential information of the producing party to the expert. Any objection by the  
10 producing party to an independent expert receiving confidential information must  
11 be made in writing within fourteen (14) days following receipt of the identification  
12 of the proposed expert. Confidential information may be disclosed to an  
13 independent expert if the fourteen (14) day period has passed and no objection has  
14 been made. The approval of independent experts must not be unreasonably  
15 withheld.

16           20. Information designated "CONFIDENTIAL" must be viewed only by  
17 the receiving party, counsel (as defined in paragraph 2) of the receiving party, by  
18 independent experts (pursuant to the terms of paragraph 19), by court personnel,  
19 and by the additional individuals listed below, provided each such individual has  
20 read this Order in advance of disclosure and has agreed in writing to be bound by  
21 its terms:

- 22           a. Executives who are required to participate in policy decisions  
23               with reference to this action;
- 24           b. Technical personnel of the parties with whom Counsel for the  
25               parties find it necessary to consult, in the discretion of such  
26               counsel, in preparation for trial of this action; and
- 27           c. Stenographic and clerical employees associated with the  
28               individuals identified above.

1           21. With respect to material designated "CONFIDENTIAL" or  
2 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of  
3 the document to be its originator, author, or a recipient of a copy of the document,  
4 may be shown the same.

5           22. All information which has been designated as "CONFIDENTIAL" or  
6 "CONFIDENTIAL - FOR COUNSEL ONLY" by the producing or disclosing party,  
7 and any and all reproductions of that information, must be retained in the custody  
8 of the receiving party and/or counsel for the receiving party identified in paragraph  
9 3, except that independent experts authorized to view such information under the  
10 terms of this Order may retain custody of copies such as are necessary for their  
11 participation in this litigation.

12           23. Before any materials produced in discovery, answers to interrogatories,  
13 responses to requests for admissions, deposition transcripts, or other documents  
14 which are designated as confidential information are filed with the Court for any  
15 purpose, the party seeking to file such material must seek permission of the Court  
16 to file the material under seal.

### 17           **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18           24. At any stage of these proceedings, any party may object to a  
19 designation of the materials as confidential information. The party objecting to  
20 confidentiality must notify, in writing, counsel for the designating party of the  
21 objected-to materials and the ground(s) for the objection. Thereafter, lead counsel  
22 (or attorneys with full authority to make decisions and bind the client without later  
23 seeking approval from a supervising attorney) must promptly meet and confer,  
24 pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7) days  
25 of receipt of the objections, and after counsel have thoroughly and completely met  
26 and conferred, the parties must place a joint call to the assigned magistrate judge's  
27 chambers to explain the dispute and the parties' respective positions. The materials  
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1 at issue must be treated as confidential until the Court has ruled on the objection, or  
2 the matter has been otherwise resolved.

3 **FILING PROTECTED MATERIAL PURSUANT TO JUDGE BUTCHER’S**  
4 **CHAMBERS RULES**

5 25. No party may file any document under seal, except pursuant to a court  
6 order that authorizes the filing of the document, or portion of the document, under  
7 seal. A sealing order will issue only upon a showing that the information is  
8 privileged or protectable under the law. The party seeking to file under seal must  
9 limit its sealing request to the specific portion of the document that contains the  
10 confidential or privileged material.

11 26. To file a document under seal, the parties must comply with the  
12 procedures explained in Section 2.j of the Electronic Case Filing Administrative  
13 Policies and Procedures Manual for the United States District Court for the  
14 Southern District of California and Civil Local Rule 79.2. In addition, a party must  
15 file a redacted version of any document that it seeks to file under seal. The  
16 document must be titled to show that it corresponds to an item filed under seal, e.g.,  
17 ‘Redacted Copy of Sealed Declaration of John Smith in Support of Motion for  
18 Summary Judgment.’ The party should file the redacted document(s)  
19 simultaneously with a joint motion or ex parte application requesting that the  
20 confidential portions of the document(s) be filed under seal and setting forth good  
21 cause for the request.”

22 **DISCLOSURE OF “CONFIDENTIAL” INFORMATION OR ITEMS**

23 27. Unless otherwise ordered by the court or permitted in writing by the  
24 designating party, a receiving party may disclose any information or item  
25 designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY”  
26 only to:

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- 1 a. the receiving party's counsel in this Action, as well as  
2 employees of said counsel to whom it is reasonably necessary to  
3 disclose the information for this action;
- 4 b. the officers, directors, claim administrators, and employees  
5 (including house counsel) of the receiving party to whom  
6 disclosure is reasonably necessary for this action;
- 7 c. experts (as defined in this Order) of the receiving party to whom  
8 disclosure is reasonably necessary for this action;
- 9 d. the court and its personnel;
- 10 e. court reporters and their staff;
- 11 f. professional jury or trial consultants, mock jurors, and  
12 professional vendors to whom disclosure is reasonably  
13 necessary for this action;
- 14 g. the author or recipient of a document containing the information  
15 or a custodian or other person who otherwise possessed or knew  
16 the information;
- 17 h. any mediator or settlement officer, and their supporting  
18 personnel, mutually agreed upon by any of the parties engaged  
19 in settlement discussions; and
- 20 i. auditors, accountants, regulators, reinsurers, reinsurance  
21 intermediaries or retrocessionaires of a party to whom  
22 disclosure is reasonably necessary for this action and/or who  
23 demand access and have a contractual, business, legal or other  
24 regulatory right to review such protected material; and
- 25 j. any other person or entity that the designating party agrees to in  
26 writing.

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1 by the remedies and relief provided by this Protective Order. Nothing in these  
2 provisions should be construed as prohibiting a non-party from seeking additional  
3 protections.

4 31. In the event that a party is required, by a valid discovery request, to  
5 produce a non-party's confidential information in its possession, and the party is  
6 subject to an agreement with the non-party not to produce the non-party's  
7 confidential information, then the party shall:

- 8 a. promptly notify in writing the requesting party and the non-party  
9 that some or all of the information requested is subject to a  
10 confidentiality agreement with a non-party;
- 11 b. promptly provide the non-party with a copy of this Protective  
12 Order, the relevant discovery request(s), and a reasonably  
13 specific description of the information requested; and
- 14 c. make the information requested available for inspection by the  
15 non-party.

16 32. If the non-party fails to object or seek a protective order from this  
17 Court within 14 days of receiving the notice and accompanying information, the  
18 receiving party may produce the non-party's confidential information responsive to  
19 the discovery request. If the non-party timely seeks a protective order, the receiving  
20 party shall not produce any information in its possession or control that is subject  
21 to the confidentiality agreement with the non-party before a determination by the  
22 Court. Absent an order to the contrary, the non-party shall bear the burden and  
23 expense of seeking protection in this Court of its protected material.

24 **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 33. All confidential information must be held in confidence by those  
26 inspecting or receiving it, and must be used only for purposes of this action.  
27 Counsel for each party, and each person receiving confidential information must  
28 take reasonable precautions to prevent the unauthorized or inadvertent disclosure of

1 such information. If confidential information is disclosed to any person other than  
2 a person authorized by this Order, the party responsible for the unauthorized  
3 disclosure must immediately: (a) notify in writing the designating party of the  
4 unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies  
5 of the protected material; and (c) inform the person or persons to whom  
6 unauthorized disclosures were made of all the terms of this Order.

7 34. No party will be responsible to another party for disclosure of  
8 confidential information under this Order if the information in question is not  
9 labeled or otherwise identified as such in accordance with this Order.

#### 10 **INADVERTENT DISCLOSURE OF PROTECTED MATERIAL**

11 35. If a party, through inadvertence, produces any confidential information  
12 without labeling or marking or otherwise designating it as such in accordance with  
13 this Order, the designating party may give written notice to the receiving party that  
14 the document or thing produced is deemed confidential information, and that the  
15 document or thing produced should be treated as such in accordance with that  
16 designation under this Order. The receiving party must treat the materials as  
17 confidential once the designating party so notifies the receiving party. If the  
18 receiving party has disclosed the materials before receiving the designation, the  
19 receiving party must notify the designating party in writing of each such disclosure.  
20 Counsel for the parties will agree on a mutually acceptable manner of labeling or  
21 marking the inadvertently produced materials as "CONFIDENTIAL" or  
22 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE  
23 ORDER.

#### 24 **FINAL DISPOSITION**

25 36. Upon the final disposition of this action, including all appeals, the  
26 receiving party and/or counsel (as defined in paragraph 2) of the receiving party  
27 may maintain copies of any confidential information, however, all retained  
28 confidential information shall continue to be treated as confidential in accordance

1 with the terms of this Agreement. The parties, on their own or by and through their  
2 counsel, may also return the confidential information or certify by affidavit or  
3 attestation that the confidential information has been destroyed within sixty (60)  
4 days of the final disposition of this matter. Any Protected Material that is  
5 maintained will remain subject to this Protective Order as set forth in Section 2  
6 (DURATION).

### 7 **MISCELLANEOUS**

8 37. Nothing within this Order will prejudice the right of any party to object  
9 to the production of any discovery material on the grounds that the material is  
10 protected as privileged or as attorney work product.

11 38. Nothing in this Order will bar counsel from rendering advice to their  
12 clients with respect to this litigation and, in the course thereof, relying upon any  
13 information designated as confidential information, provided that the contents of  
14 the information must not be disclosed.

15 39. This Order will be without prejudice to the right of any party to oppose  
16 production of any information for lack of relevance or any other ground other than  
17 the mere presence of confidential information. The existence of this Order must not  
18 be used by either party as a basis for discovery that is otherwise improper under the  
19 Federal Rules of Civil Procedure.

20 40. Nothing within this Order will be construed to prevent disclosure of  
21 confidential information if such disclosure is required by law or by order of the  
22 Court.

23 41. The restrictions and obligations set forth within this Order will not  
24 apply to any information that: (a) the parties agree should not be designated  
25 confidential information; (b) the parties agree, or the Court rules, is already public  
26 knowledge; (c) the parties agree, or the Court rules, has become public knowledge  
27 other than as a result of disclosure by the receiving party, its employees, or its agents  
28 in violation of this Order; or (d) has come or will come into the receiving party's

1 legitimate knowledge independently of the production by the designating party.  
2 Prior knowledge must be established by pre-production documentation.

3 42. The restrictions and obligations within this Order will not be deemed  
4 to prohibit discussions of any confidential information with anyone if that person  
5 already has or obtains legitimate possession of that information.

6 43. Transmission by email or some other currently utilized method of  
7 transmission is acceptable for all notification purposes within this Order.

8 44. This Order may be modified by agreement of the parties, subject to  
9 approval by the Court.

10 45. The Court may modify the Order in the interest of justice or for public  
11 policy reasons, for good cause, or on its own order at any time in these proceedings.  
12 The parties prefer that the Court provide them with notice of the Court's intent to  
13 modify the Order and the content of those modifications, prior to entry of such an  
14 order.

15 IT IS SO ORDERED.

16 Dated: October 1, 2021



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Honorable Daniel E. Butcher  
United States Magistrate Judge