

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-CV- 01819-REB-MEH

NORTHWEST PARKWAY PUBLIC HIGHWAY AUTHORITY,

Plaintiff,

v.

BAYERISCHE HYPO- UND VEREINSBANK AG, New York Branch

Defendant.

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BAYERISCHE HYPO- UND VEREINSBANK AG, New York Branch,

Counterclaim-Plaintiff,

v.

NORTHWEST PARKWAY PUBLIC HIGHWAY AUTHORITY,

Counterclaim-Defendant.

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**STIPULATION AND PROTECTIVE ORDER REGARDING**  
**DISCOVERY IN CONNECTION WITH EXPERTS**

In order to avoid consuming the parties' and the Court's time and resources on potential discovery issues relating to experts, the parties have agreed to certain limitations on the scope of expert-related discovery and testimony in this matter. Neither the terms of this Stipulation and Protective Order nor the parties' agreement to them implies that any of the information restricted from discovery in this Stipulation and Protective Order would otherwise be discoverable.

1. The parties will make all disclosures required by Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, as modified or limited by this Stipulation and Protective Order, at the times provided by this Court for the service of written expert reports. The parties will supplement such disclosures at least three (3) business days before an expert's deposition.

2. Except as provided below, the parties will not seek discovery (through document requests, requests to admit, interrogatories or deposition testimony) of any written or oral communications between an expert and its counsel, or any attorney notes or other materials created by counsel in connection with the expert reports (the "*Expert Materials*").

3. Notwithstanding Paragraph 2, the parties shall be entitled to a copy of  
(a) each testifying expert's retainer agreement(s);

(b) documents sufficient to show (i) the total amount of fees and expenses billed by each testifying expert, (ii) the total amount paid and payable to each testifying expert, and (iii) the number of hours billed by the testifying expert; and

(c) documents provided by counsel to the Expert.

4. To the extent permitted by applicable law, the parties also shall be entitled to other documents that relate to the expert's opinion, including, but not limited to, documents reviewed or relied upon by the expert, the expert's notes, and any draft reports or opinions prepared by the expert.

5. To the extent that the expert report includes or is based on, exhibits, information or data processed or modeled by computer, native format copies of those exhibits, information and data (including all input and output files, customized language or programs used to generate output, instructions and field descriptions) shall be produced within five business days of the production of the expert's reports in the same form or format in which it was used for the expert's calculations, in working order with all links to other spreadsheets and/or underlying data. No party need produce non-customized computer software programs or licensed data.

6. The parties agree to comply with this Stipulation and Protective Order pending the Court's approval and entry of this Stipulation and Protective Order.

Dated this 12<sup>th</sup> day of June, 2009.

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Attorney for Plaintiff

## **ORDER**

The preceding Stipulation and Protective Order is approved, ordered and entered this 15th day of June, 2009. This Stipulation and Protective Order may be modified by the Court at any time, for good cause shown, following notice to all parties and an opportunity for them to be heard.

BY THE COURT:

s/ Michael E. Hegarty

Michael E. Hegarty

United States Magistrate Judge