

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1 Abran E. Vigil
Nevada Bar No. 7548
2 Maria A. Gall
Nevada Bar No. 14200
3 Joseph P. Sakai
Nevada Bar No. 13578
4 BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
5 Las Vegas, Nevada 89106
Phone: (702) 471-7000
6 Fax: (702) 471-7070
Email: vigila@ballardspahr.com
7 Email: gallm@ballardspahr.com
Email: sakaij@ballardspahr.com

8 *Attorneys for Defendant and Counter-*
9 *Claimant Zurich American*
10 *Insurance Company*

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 TODD L. LEANY,)
14 Plaintiff,)
15 v.)
16 ZURICH AMERICAN INSURANCE)
COMPANY, a New York corporation,)
17 Defendant.)
18 _____)
19 ZURICH AMERICAN INSURANCE)
COMPANY,)
20 Counterclaimant,)
21 v.)
22 TODD L. LEANY,)
23 CounterDefendant.)
24 _____)

CASE NO. 2:16-cv-01890-RFB-PAL

STIPULATED PROTECTIVE ORDER

25
26 The parties to this action, by their respective counsel, having agreed to the
27 following, and for good cause shown, IT IS HEREBY ORDERED as follows:
28

1 **1. PURPOSE AND LIMITATIONS.**

2 Disclosure and discovery activity in this action may involve production of
3 confidential, proprietary, or private information for which special protection from
4 public disclosure may be warranted. The parties acknowledge that this Order does
5 not confer blanket protections on all disclosures or responses to discovery and that
6 the protection it affords extends only to the limited information or items that are
7 entitled under law to treatment as confidential.

8 **2. SCOPE.**

9 All documents produced in the course of discovery, all responses to discovery
10 requests, and all deposition testimony and exhibits and any other materials which
11 may be subject to discovery, including subpoenaed documents (hereinafter
12 collectively “documents”), shall be subject to this stipulated protective order
13 concerning confidential information as set forth below. Any party, or any third party
14 who produces documents in this litigation, may designate documents as
15 CONFIDENTIAL but only after review of the documents by an attorney who has, in
16 good faith, determined that the documents contain “Confidential Information,” as
17 defined below, and pursuant to the procedure set forth below.

18 **3. CONFIDENTIAL INFORMATION.**

19 “Confidential Information” shall mean any information, testimony, document,
20 or thing that contains confidential or proprietary information, such as trade secret,
21 financial information, or commercial information concerning a business’s customers,
22 vendors, personnel and operations. Nothing in this paragraph shall be construed as
23 an exclusion of any other material from the definition of “Confidential Information.”

24 Confidential Information does not include information that: (a) is in the public
25 domain at the time of disclosure; (b) becomes part of the public domain through no
26 fault of the Receiving Party; (c) the Receiving Party can show was in its rightful and
27 lawful possession at the time of disclosure; or (d) the Receiving Party lawfully
28 receives from a Non-Party later without restriction as to disclosure.

1 **4. OTHER DEFINITIONS.**

2 Party: any party to this action and attorney(s) of record for a Party in this
3 action, including their associates, paralegals, and support/clerical staff.

4 Non-Party: any individual, corporation, association, or natural person or entity
5 other than a Party.

6 Protected Material: any disclosure or discovery material that is designated by
7 a Party or Non-Party as “CONFIDENTIAL,” unless the Receiving Party challenges
8 the confidentiality designation and (a) the Court decides such material is not entitled
9 to protection as confidential; (b) the Designating Party fails to apply to the Court for
10 an order designating the material confidential within the time period specified in
11 Section 9 below; or (c) the Designating Party withdraws its confidentiality
12 designation in writing.

13 Producing Party: a Party or Non-Party that produces disclosures or discovery
14 material in this action.

15 Receiving Party: a Party that receives disclosures or discovery material from a
16 Producing Party.

17 Designating Party: a Party or Non-Party that designates information or items
18 that it produces in disclosures or in responses to discovery as Protected Material. The
19 Party or Non-Party designating information or items as Protected Material bears the
20 burden of establishing good cause for the confidentiality of all such items.

21 Challenging Party: a party that elects to initiate a challenge to a Designating
22 Party’s confidentiality designation.

23 Arbitration: the arbitration between Zurich American Insurance Company, as
24 claimant, and Century Steel, Inc., as respondent, currently pending before the
25 American Arbitration Association as Case No. 01-16-0003-1446.

26 Arbitrators: the arbitrators appointed to the Arbitration, Richard J. Collier,
27 Esq., Thomas G. Ryan, Esq., and William C. Turner, Esq., and any further arbitrator
28 that may be appointed in the Arbitration.

1 **5. FORM AND TIMING OF DESIGNATION.**

2 Protected Material shall be so designated by the Producing Party by placing or
3 affixing the word “CONFIDENTIAL” on the document. Documents shall be
4 designated “CONFIDENTIAL” prior to, or contemporaneously with, the production or
5 disclosure of the documents.

6 Portions of depositions shall be deemed CONFIDENTIAL only if designated as
7 such when the deposition is taken or within fourteen business days after receipt of
8 the transcript. Such designation shall be specific as to the portions to be protected.

9 A Designating Party must exercise restraint and make good faith efforts to
10 limit “CONFIDENTIAL” designations to specific materials that qualify for protection
11 under the appropriate standards.

12 Inadvertent or unintentional production of Protected Material without prior
13 designation as “CONFIDENTIAL” shall not be deemed a waiver, in whole or in part,
14 of the right to designate documents as Protected Material as otherwise allowed by
15 this Order. Further, a Party may assert that disclosures or discovery material
16 produced by another Party constitute Protected Material by informing the opposing
17 Party by following the procedures set forth herein for a Designated Party.

18 **6. PROTECTION OF PROTECTED MATERIAL.**

19 **a. General Protections.** Protected Material shall not be used or
20 disclosed by the parties or counsel for the parties or any other persons identified
21 below (at ¶ 6.b.) for any purpose whatsoever other than preparing for and conducting
22 this litigation (including any appeal) and the Arbitration.

23 **b. Qualified Receiving Parties and Limited Third Party Disclosures.**

24 Protected Material shall be held in confidence by each qualified Receiving
25 Party to whom it is disclosed, shall be used only for purposes of this action and/or the
26 Arbitration, and shall not be disclosed to any person who is not a qualified recipient.
27 All Protected Material shall be carefully maintained so as to preclude access by
28 persons who are not qualified Receiving Parties.

1 Subject to these requirements, in addition to Parties, and the Court, the
2 following categories of persons may be allowed to review Protected Material pursuant
3 to this Order after executing an acknowledgment (in the form set forth at Exhibit A
4 hereto), that he or she has read and understands the terms of this Order and is
5 bound by it:

6 (1) Any officers, directors, or designated employees of a Party deemed
7 necessary by counsel of record in this action to aid in the prosecution, defense, or
8 settlement of this action;

9 (2) Professional outside vendors for attorneys of record (such as copying
10 services and translators and interpreters);

11 (3) Deposition notaries and staff;

12 (4) The author of any document designated as CONFIDENTIAL or the
13 original source of Confidential Information contained therein;

14 (5) Persons other than legal counsel who have been retained or specially
15 employed by a party as an expert witness for purposes of this lawsuit or to perform
16 investigative work or fact research;

17 (6) Deponents during the course of their depositions;

18 (7) Counsel for issuers of insurance policies under which any issuer may be
19 liable to satisfy part or all of a judgment that may be entered in these proceedings or
20 indemnify or reimburse payments or costs associated with these proceedings;

21 (9) Any other person as to whom the Producing Party has consented to
22 disclosure in advance and in writing, on notice to each Party hereto.

23 c. **Control of Documents.** Counsel for Parties shall take reasonable
24 efforts to prevent unauthorized disclosure of Protected Material pursuant to the
25 terms of this Order. No copies of Protected Material shall be made except by or on
26 behalf of attorneys of record, in-house counsel or the parties in this action.

27 d. **Copies.** Any person making copies of Protected Material shall
28 maintain all copies within their possession or the possession of those entitled to

1 access to such information under the Protective Order. All copies shall be
2 immediately affixed with the designation “CONFIDENTIAL” if the word does not
3 already appear on the copy. All such copies shall be afforded the full protection of
4 this Order.

5 **7. UNAUTHORIZED DISCLOSURE.**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
9 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
10 to retrieve all copies of the Protected Material, (c) inform the person or persons to
11 whom unauthorized disclosures were made of all the terms of this Order, and (d)
12 request such person or persons to execute the “Acknowledgment and Agreement to
13 Be Bound by Stipulated Protective Order” (Exhibit A).

14 **8. FILING OF PROTECTED MATERIALS; PROTECTED MATERIALS**
15 **IN COURT.**

16 Subject to the Federal Rules of Evidence, Protected Material may be filed with
17 the Court or offered in evidence or hearing or trial of this case. This Order does not
18 seal court records in this case or apply to disclosure of Protected Material at trial.
19 Further, the parties understand that documents may be filed under seal only with
20 the permission of the Court after proper motion. Further, the fact that documents
21 have been designated as “CONFIDENTIAL” shall not be admissible evidence that
22 the documents in fact contain information entitled to protection from disclosure
23 under the law.

24 However, in the event a Party seeks to file Protected Materials with the Court,
25 those documents shall be filed under seal pursuant to Rule 10-5(b) of the Local Rules
26 of Practice for the U.S. District Court of Nevada and the Ninth Circuit’s decision in
27 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The Party
28 filing such Protected Materials may assert in the accompanying motion any reasons

1 why the Protected Materials should not, in fact, be kept under seal and the
2 Designating Party, who must be properly noticed, may likewise file a motion to assert
3 its position that the Protected Material merits protection under Rule 26(c) of the
4 Federal Rules of Civil Procedure. In such instances, absent extraordinary
5 circumstances making prior consultation impractical or inappropriate, the Party
6 seeking to submit the Protected Material to the Court shall first consult with the
7 Designating Party. If the sole ground for a motion to seal is that the opposing party
8 (or non-party) has designated a document as subject to protection pursuant to this
9 Stipulated Protective Order, the movant must notify the opposing party (or non-
10 party) at least seven days prior to filing the designated document. The Designating
11 Party must then make a good faith determination if the relevant standard for sealing
12 is met. To the extent the Designating Party does not believe the relevant standard
13 for sealing can be met, it shall indicate that the document may be filed publicly no
14 later than four days after receiving notice of the intended filing. To the extent the
15 Designating Party believes the relevant standard for sealing can be met, it shall
16 provide a declaration supporting that assertion no later than four days after
17 receiving notice of the intended filing. The filing party shall then attach that
18 declaration to its motion to seal the designated material. If the Designating Party
19 fails to provide such a declaration in support of the motion to seal, the filing party
20 shall then file a motion to seal so indicating and the Court may order the document
21 filed in the public record.

22 **9. CHALLENGES TO PROTECTED MATERIAL.**

23 Any designation of Protected Material is subject to challenge. The following
24 procedures shall apply to any such challenge:

25 **a. Burden.** The burden of proving the necessity of a
26 “CONFIDENTIAL” designation remains with the party asserting confidentiality.

27 **b. Notice; Opportunity to Challenge.** A party who contends that
28 Protected Material is not entitled to confidential treatment shall give written notice

1 to the party who affixed the “CONFIDENTIAL” designation of the specific basis for
2 the challenge. The party who so designated the documents shall have ten (10) days
3 from service of the written notice to determine if the dispute can be resolved without
4 judicial intervention and, if not, to move for an Order confirming the
5 “CONFIDENTIAL” designation, and the status as Protected Material.

6 **c. Treatment as Protected Material Until Order or Withdrawal.**

7 Notwithstanding any challenge to the designation of documents as such, all material
8 previously designated “CONFIDENTIAL” shall continue to be treated as Protected
9 Material subject to the full protections of this Order until one of the following occurs:
10 (1) the Party who claims that the documents are Protected Material withdraws such
11 designation in writing; (2) the Party who claims that the documents are confidential
12 fails to move timely for an Order designating the documents as confidential as set
13 forth in paragraph 9.b. above; or (3) the Court rules that the documents are not
14 Protected Material and/or should no longer be designated as “CONFIDENTIAL.”

15 **d. No Waiver.** Challenges to the confidentiality of documents may
16 be made at any time and are not waived by the failure to raise the challenge at the
17 time of initial disclosure or designation.

18 **10. DURATION; CONCLUSION OF LITIGATION.**

19 All provisions of this Order restricting the use of Protected Material shall
20 continue to be binding after the conclusion of the litigation unless otherwise agreed
21 or ordered. Within 30 days of the final termination of this matter, which would be
22 either a final judgment on all claims or stipulation and order for dismissal with
23 prejudice, all documents and information designated as CONFIDENTIAL by a
24 Designating Party and which has not been challenged, including any copies, or
25 documents containing information taken therefrom, shall be returned to the
26 Designating Party. In the alternative, within 30 days of the final termination of this
27 case, which would be either a final judgment on all claims or stipulation and order for
28 dismissal with prejudice, all such documents, including copies, may be shredded or

1 disposed of in a manner to ensure the destruction thereof and a declaration certifying
2 such destruction or disposal provided to the Designating Party. To the extent a party
3 has designated portions of a deposition transcript as CONFIDENTIAL, the non-
4 designating party shall dispose of or completely redact those portions deemed
5 CONFIDENTIAL, but is under no obligation or duty to shred or dispose of the
6 remainder of the deposition transcript that was not designated CONFIDENTIAL.

7 **11. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
8 **IN OTHER LITIGATION.**

9 If a Party is served with a subpoena or an order issued in other litigation that
10 would compel disclosure of Protected Material designated by another Party or Non-
11 Party, the Party must so notify the Designating Party, in writing (by e-mail or fax, if
12 possible) within three (3) court days after receiving the subpoena or order. Such
13 notification must include a copy of the subpoena or court order.

14 **12. ORDER SUBJECT TO MODIFICATION.**

15 This Order shall be subject to modification on motion of any Party or any other
16 person who may show an adequate interest in the matter to intervene for purposes of
17 addressing the scope and terms of this Order. The Order shall not, however, be
18 modified until the Parties shall have been given notice and an opportunity to be
19 heard on the proposed modification.

20 **13. NO JUDICIAL DETERMINATION.**

21 This Order is entered based on the representations and agreements of the
22 Parties and for the purpose of facilitating discovery. Nothing herein shall be
23 construed or presented as a judicial determination that any specific document or item
24 of information designated as CONFIDENTIAL by counsel is subject to protection
25 under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time
26 as a document-specific ruling shall have been made.

27
28

EXHIBIT A

EXHIBIT A

BALLARD SPAHR LLP
100 NORTH CITY PARKWAY, SUITE 1750
LAS VEGAS, NEVADA 89106
(702) 471-7000 FAX (702) 471-7070

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACKNOWLEDGEMENT OF UNDERSTANDING
AND AGREEMENT TO BE BOUND

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TODD L. LEANY,)	CASE NO. 2:16-cv-01890-RFB-PAL
Plaintiff,)	
v.)	
ZURICH AMERICAN INSURANCE)	<u>ACKNOWLEDGEMENT OF</u>
COMPANY, a New York corporation,)	<u>UNDERSTANDING AND AGREEMENT</u>
Defendant.)	<u>TO BE BOUND</u>
<hr/>		
ZURICH AMERICAN INSURANCE)	
COMPANY,)	
Counterclaimant,)	
v.)	
TODD L. LEANY,)	
CounterDefendant.)	

The undersigned hereby acknowledges that he or she has read the Stipulated Protective Order dated _____, 2017, in the above-captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada in the matter relating to the Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action or the Arbitration currently pending before the American Arbitration Association as Case No. 01-16-0003-1446, and not to disclose any such Protected Material to any person, firm, entity, or concern.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The undersigned acknowledges that violation of the Stipulated Protective Order may result in penalties for contempt of court.

Name: _____
Job Title: _____
Employer: _____
Business Address: _____

Date

Signature