

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 12/11/08

21 MC 100 (AKH)

IN RE WORLD TRADE CENTER  
DISASTER SITE LITIGATION

THIS DOCUMENT APPLIES TO ALL  
IN RE WORLD TRADE CENTER  
DISASTER SITE LITIGATION

**PROTECTIVE ORDER NO. 2 GOVERNING  
THE DISCLOSURE OF CONFIDENTIAL  
INFORMATION AND CONFIDENTIAL  
INSURANCE INFORMATION**

WHEREAS, individual actions (“Actions”) brought by plaintiffs alleging respiratory and non-respiratory injuries allegedly relating to the rescue, recovery, and debris removal operations following the terrorist attacks on the World Trade Center on September 11, 2001 have been consolidated under the above-referenced master docket (the “Litigation”);

THEREFORE, in accordance with Federal Rule of Civil Procedure 26(c), the Court hereby enters this Protective Order No. 2 Governing the Disclosure of Confidential Information and Confidential Insurance Information (“Protective Order No. 2”), which will govern the disclosure, handling and disposition of “Confidential Information” or “Confidential Insurance Information” (as defined below) produced by the Plaintiffs and Defendants (collectively, the “Parties”) in the Litigation as follows:

**1. Application.**

1.1 This Order shall govern the disclosure of any information, documents and things that are designated as containing “Confidential Information” or “Confidential Insurance Information” (as defined below) and are furnished in connection with this Litigation, whether in response to the November 27, 2007 “Clarifying Order Regulating Discovery” (“Core Discovery Order”); future discovery requests by the parties (by subpoena or otherwise); to future Court-ordered discovery; to any other person or entity regardless of whether the person or entity producing or receiving the information, documents, and things is a party to this Litigation.

1.2 Protective Order No. 2 shall supersede all protective orders and/or confidentiality agreements previously entered in the 21 MC 100 Litigation, except for the Confidentiality Agreement and Protective Order between Plaintiffs’ Co-Liaison Counsel and the Verizon entities (including Verizon Communications Inc., Verizon New York, Inc., Verizon Properties Inc., and all other Verizon entities that are named or served in this Litigation) that was so-ordered by the Court on May

10, 2006. That May 10, 2006 Confidentiality Agreement and Protective Order will continue to apply to this litigation in full force.

## **2. Definitions.**

**2.1 Confidential Information.** “Confidential Information” shall mean and include, without limitation, any documents, information, or things that concern or relate to confidential, non-public, proprietary, and competitively sensitive information; trade secrets; other confidential technical information; research or marketing information; financial records and analyses; agreements and business relationships; non-public commercial, financial, pricing, budgeting and/or accounting information; social security numbers; personal identifying information; non-public information about existing and potential customers; marketing studies; performance and projections, non-public business strategies, decisions and/or negotiations; personnel compensation, evaluations and other employment information; and confidential proprietary information about affiliates, parents, subsidiaries and third-parties with whom the parties to this action have or have had business relationships.

**2.2 Confidential Insurance Information.** The term “Confidential Insurance Information” shall mean insurance information, including, but not limited to, all agreements, policies, documents constituting such agreements and policies, and all information contained therein (including, but not limited to: the type of insurance; the identity of the broker, agent, or insurer; and the terms, conditions, and/or limits of the policies, whether per individual policy or in total).

**2.3 Counsel.** The term “Counsel” shall mean outside counsel representing the Parties, (including the Office of Corporation of the City of New York) and their necessary clerical and support personnel, including, but not limited to, secretaries, paralegals, clerks, internal and outside copying staff or services, and document management services. However, for purposes of paragraphs 6.3, 6.4, 6.5, 6.6, and 6.7, the Office of Corporation Counsel of the City of New York shall not be considered “Counsel,” and therefore will not be authorized to view, use, or gain access to “Confidential Insurance Information” produced by other parties in this Litigation.

**2.4 Experts.** The term “Experts” shall refer to independent experts and their staff who are engaged, consulted, or retained by Counsel for a party in this Litigation for purposes of assisting the parties and their attorneys in the preparation and presentation of their claims and defenses in this Litigation, and who have, pursuant to procedures outlined in paragraphs 6.2, 6.4, 6.5, 6.6, and 6.7, agreed in writing to be bound by this Protective Order and therefore can receive another party’s “Confidential Information” or “Confidential Insurance Information.” For purposes of this

Protective Order, an independent expert does not have to be designated as a testifying expert, but is an individual who (1) if he/she were to be called as a witness at the trial of this matter, would qualify to testify under Federal Rule of Evidence 702; and (2) who is not a current employee, officer, director, consultant, agent or representative of the party receiving the "Confidential Information or Confidential Insurance Information" or any competitor or adversary, in separate litigation or otherwise, of the producing or designating party(ies) (or any of their parent, subsidiary or sibling companies).

**2.5 Documents.** As used herein, the term "documents" is defined to be synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a) and Local Rule for the United States District Court for the Southern District of New York 26.3, including, without limitation, writings, drawings, graphs, charts, photographs, sound recordings, images, electronically stored information, electronic or computerized data compilations, other data or data compilations stored in any medium from which information can be obtained, and other tangible things subject to production under the Federal Rules of Civil Procedure and Local Rules for the United States District Court for the Southern District of New York.

**2.6 Producing Party and Receiving Party.** As used herein, the term "producing party" shall mean the party making production, through counsel, of information, documents, or things that have been designated as "Confidential Information" or "Confidential Insurance Information." As used herein, the term "receiving party" shall mean the counsel for the party receiving production of the "Confidential Information" or "Confidential Insurance Information" as provided in paragraphs 6.1, 6.3, 6.4, 6.5, 6.6, and 6.7, of this Protective Order No. 2. These terms shall apply even when the person(s) or entity(ies) producing or receiving the "Confidential Information" or "Confidential Insurance Information" are not parties to this Litigation.

### **3. Designation.**

**3.1 Good Faith Designations.** Designations of confidentiality will be made only with respect to documents, other tangible things, and information that the producing party in good faith believes satisfy the definitions set forth in paragraphs 2.1 or 2.2 of this Protective Order. Objections to such designations made pursuant to paragraph 4 shall also be made in good faith.

**3.2 Produced Documents.** Copies of documents that the producing party believes constitute or contain "Confidential Information" or "Confidential Insurance Information" shall be marked, respectively, as "CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER NO. 2, SEPT. 2008" or "CONFIDENTIAL INSURANCE INFORMATION, SUBJECT TO

PROTECTIVE ORDER NO. 2, SEPT 2008” in a manner that will not interfere with the legibility thereof.<sup>1</sup> Alternatively, the producing or designating party may specifically identify in written correspondence directed to the receiving party those documents, information and things that the producing or designating party wishes to designate as “Confidential Information” or “Confidential Insurance Information.” After receipt of such notification, any party to whom production has been made will treat such documents, information or things in accordance with the terms of this Protective Order No. 2.

**3.3 Interrogatory Answers and Written Core Discovery Responses.** If a party answering an interrogatory or providing a written response to a request in the Court’s Core Discovery believes that its answer or written response contains “Confidential Information” or “Confidential Insurance Information,” it shall set forth that answer or response in a separate document that is produced and designated as such, in the same manner as a produced document under paragraph 3.2. The answers to interrogatories or written responses to the Court’s Core Discovery should make reference to the separately produced document containing the “Confidential Information” or “Confidential Insurance Information,” but that document should not be attached to the interrogatory answers or written Core Discovery responses. No additional time will be given to answer Interrogatories containing “Confidential Information” or “Confidential Insurance Information” by reason of this separate submission.

**3.4 Additional Designating Parties.** Any party, which in good faith claims an interest in protecting the confidentiality of any documents or information produced by another party or by a non-party, may designate such documents or information as “Confidential Information” in accordance with this Protective Order No. 2. In that event, the party so designating shall be considered a designating party with respect to such “Confidential Information.” In addition, where a party authored, created, owns, or controls a document or information that another party designates as “Confidential Information,” the party that authored, created, owns, or controls the document or information may designate the document or information as “Confidential Information” in accordance with this Protective Order No. 2 and thereafter shall also be considered a designating party for purposes of this Protective Order No. 2.

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<sup>1</sup> Documents that have been marked, pursuant to Protective Order No. 1, as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER NO. 1, FEB. 2008” shall be subject to the terms of this Protective Order No. 2. Likewise, documents that have been marked, pursuant to Protective Order No. 1, as “CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER NO. 1, FEB. 2008 – ENUMERATED PARTIES ONLY” shall be subject to the terms applicable to “Confidential Insurance Information” in this Protective Order No. 2.

**3.5 Deposition Transcripts.** In the event that portions of a deposition transcript, videotape, and/or exhibits contain “Confidential Information” or “Confidential Insurance Information” the deponent, deponent’s counsel, producing party, or designating party may note on the record the portions of the deposition transcript, videotape, and/or exhibits that contain such “Confidential Information” or “Confidential Insurance Information” during the appropriate times at the deposition and/or at the end of the deposition. In addition, during the portion of the deposition that such “Confidential Information” or “Confidential Insurance Information” is disclosed, all persons not authorized to view such information or documents shall be excluded from the deposition. Within twenty-eight (28) days after the receipt of such deposition transcript or videotape, a deponent, deponent’s counsel, producing party, or designating party shall confirm in writing to the other parties to the action the portions of the transcript, videotape, and/or exhibits that they wish to designate as “Confidential Information” or “Confidential Insurance Information” in accordance with paragraph 3.2. Until such time has elapsed, deposition transcripts and videotapes in their entirety and all exhibits shall be treated in accordance with the designation they were given during and/or at the end of deposition, consistent with the provisions of this Order. All parties and deponents in possession of a copy of a designated deposition transcript, videotape and/or exhibit shall appropriately mark it as containing “Confidential Information” or “Confidential Insurance Information.” In the event that the deponent, deponent’s counsel, producing party, and/or designating party fails to state on the record the portions of the deposition transcript, videotape, and/or exhibits that include “Confidential Information” or “Confidential Insurance Information,” that party will have ten (10) days after the receipt of such deposition transcript or videotape to inform the other parties to the action of the portions of the transcript, videotape, and/or exhibits that they wish to designate as “Confidential Information” or “Confidential Insurance Information” in accordance with paragraph 3.2. Until such time has elapsed, deposition transcripts and videotapes in their entirety and all exhibits shall be treated as containing “Confidential Information.” Upon such notice, all parties and deponents in possession of a copy of a designated deposition transcript, videotape and/or exhibit shall appropriately mark it as containing “Confidential Information” or “Confidential Insurance Information.” Notwithstanding any of the foregoing, any pleading and/or other court paper containing “Confidential Information” and/ or “Confidential Insurance Information” from a deposition transcript and/or exhibit shall be disclosed in the manner set forth in paragraph 6.11.

**3.6 Multi-page Documents.** For an integrated multi-page document, including a deposition transcript or interrogatory answer, containing “Confidential Information” or “Confidential Insurance Information” the first page of the multi-page document and each page of the multi-page document containing “Confidential Information” or “Confidential Insurance Information” shall be labeled as such in accordance with paragraph 3.2.

**3.7 Conflicting Designations.** In the event of conflicting designations (i.e. where duplicate documents, information, or things have been given different designations of confidentiality), the more stringent level of confidentiality shall control until the issue is resolved among the parties.

#### **4. Objections to Designations**

**4.1 Generally.** Objections made to any designation under this Protective Order No. 2 shall be made in good faith. Any party objecting to a designation of “Confidential Information” or “Confidential Insurance Information” including objections to portions of designation of multi-page documents, shall notify the producing and/or designating party in writing within one-hundred twenty (120) days (or more for good cause shown) of receiving the document, specifically identifying each document that the objecting party in good faith believes should not be designated as “Confidential Information” or “Confidential Insurance Information” and providing a brief statement of the grounds for such belief. Consistent with United States District Court Judge Alvin K. Hellerstein’s individual Rule 4.B, the objecting and producing and/or designating parties thereafter shall confer within seven (7) days after the date of such objection in an attempt to resolve the disputed issue(s) of confidentiality. If such issues are not resolved promptly, the parties shall, within thirty (30) days after the conference, seek direction from the Court in a letter as described in Judge Hellerstein’s individual Rule 2.E. If the producing and/or designating party elects not to submit a letter pursuant to Judge Hellerstein’s individual Rule 2.E with respect to documents to which an objection has been made, the designation of confidentiality shall be deemed withdrawn. All documents initially designated as “Confidential Information” or “Confidential Insurance Information” shall be treated in accordance with their designation and this Order unless and until the Court rules otherwise.

**4.2 Designations Made Near Trial.** In the case of designations received on or within one-hundred sixty (160) days of trial, the receiving party shall notify the designating party(ies) of their objections no later than 40 days before trial.

5. **Custody.** All “Confidential Information” or “Confidential Insurance Information” and any and all copies, extracts and summaries thereof, including memoranda relating thereto, shall be retained by the receiving party in the custody of counsel of record, or by persons to whom disclosure is authorized under paragraphs 6.1 or 6.3.

6. **Handling Prior to Trial.**

6.1 **Authorized Disclosure of “Confidential Information.”** Unless otherwise specified in this Protective Order No. 2, “Confidential Information,” excluding “Confidential Insurance Information” (authorized disclosure of which is defined in paragraph 6.3), may be disclosed to or used (in accordance with the terms of this Protective Order) solely by the following persons without exception:

- a. “Counsel,” as defined in paragraph 2.3, for the named Parties;
- b. Temporary employees performing services in connection with this Litigation, including temporary attorneys and staff, who are associated with the “Counsel” described in paragraph 6.1(a);
- c. Any necessary court reporter or stenographer;
- d. Experts, as defined in paragraph 2.4;
- e. Named Parties and, if that party is a corporate entity, a limited number of designated representatives of the corporate entity (including a limited number of designated representatives from the parents or affiliates of the corporate entity and their counsel) and the corporate entity’s Insurers and representatives of such Insurers, who are actively involved in the Litigation;
- f. In-house counsel for the named Parties and a limited number of assistants, administrative or otherwise; and
- g. The vendor creating, administering, and/or maintaining the Court database, as well as their necessary clerical and support personnel.

“Confidential Information” may be disclosed or used only in connection with this Litigation and shall not be disclosed or used for any other purpose, including use in other proceedings or matters, unless so ordered by the Court. A receiving party may, however, disclose “Confidential Information” to the Court supervising the Litigation, including judicial staff and the Special Masters, in accordance with paragraph 6.9 of this Order.

**6.2 Confidentiality Acknowledgments For Authorized Disclosures of “Confidential Information.”** In the event that a receiving party discloses “Confidential Information” to any of the persons described in paragraphs 6.1(b), (c), (e), or (g) that receiving party shall obtain a written acknowledgment from the person receiving such information, in the form attached hereto as Exhibit A, that he or she has received a copy of this Order and has agreed to be bound by it. Counsel for the receiving party shall retain the original of such agreement and, if requested, promptly serve a copy on counsel of record. In the event that a receiving party discloses “Confidential Information” to any of the persons described in paragraphs 6.1(d), that receiving party shall obtain a written acknowledgment from the person receiving such information, in the form attached hereto as Exhibit B, that he or she has received a copy of this Order and has agreed to be bound by it. Counsel shall retain the original of such acknowledgement and, if such expert is designated as a testifying expert witness, Counsel shall serve on all other Counsel a copy of such acknowledgment immediately upon such designation. Counsel also shall maintain a list of all persons to whom a receiving party has disclosed “Confidential Information” and shall furnish the written acknowledgements and disclosure list to the Court upon its request or order. In the event that “Confidential Information” is disclosed to any of the persons described in paragraphs 6.1(a) and (f), prior to receiving such information, such person shall be advised of this Protective Order No. 2, shall be advised of the confidential nature of the material, and shall be deemed to have subjected themselves to this Protective Order No. 2 and this Court’s jurisdiction for that purpose.

**6.3 Authorized Disclosure of “Confidential Insurance Information.”** “Confidential Insurance Information” may be disclosed to or used (in accordance with the terms of this Protective Order No. 2) solely by the following persons without exception:

- a. “Counsel,” as defined in paragraph 2.3, for the producing party;
- b. “Counsel,” as defined in paragraph 2.3, for the Port Authority of New York & New Jersey (the “Port Authority”) regarding “Confidential Insurance Information” produced by any party; and “Counsel” as defined in paragraph 2.3 for any party regarding “Confidential Insurance Information” produced by the Port Authority;
- c. Any necessary court reporter or stenographer;
- d. Any Plaintiff named in an active action consolidated for pre-trial purposes within the 21 MC 100 docket, in accordance with paragraphs 6.5 and 6.6;

- e. Experts, as defined in paragraph 2.4, retained by Counsel in this litigation to analyze insurance coverage in accordance with paragraphs 6.5, 6.6, and 6.7; and
- f. One in-house counsel employed by the Port Authority and the person to whom that in-house counsel reports, those individuals to be as identified by the Port Authority and disclosed to counsel for all parties.

“Confidential Insurance Information” may be disclosed or used by the receiving party or those identified in paragraphs 6.3(a), (b), (c), (d), (e), and (f) only in connection with this Litigation, and shall not be used by or disclosed, and shall not be used or disclosed for any other purpose, including use in other proceedings or matters, unless so ordered by the Court. For the avoidance of doubt, no “Confidential Insurance Information” may be disclosed, discussed, or referred to in communications with any person not specifically identified in paragraph 6.3 of this Protective Order No. 2 unless so ordered by the Court. A receiving party may, however, disclose “Confidential Insurance Information” to the Court supervising the Litigation, including judicial staff and the Special Masters, in accordance with paragraph 6.11 of this Order. As set forth in paragraph 2.3, Corporation Counsel of the City of New York shall not be considered “Counsel” for the purpose of this provision and therefore will not have access to Confidential Insurance Information.

**6.4 Confidentiality Acknowledgements For Authorized Disclosures of “Confidential Insurance Information”** In the event that “Confidential Insurance Information” is disclosed to any of the persons described in paragraph 6.3(a), prior to receiving such information, such person shall be advised of this Protective Order No. 2, shall be advised of the confidential nature of the material, and shall be deemed to have subjected themselves to this Protective Order No. 2 and this Court’s jurisdiction for that purpose. In the event that “Confidential Insurance Information” is disclosed to any of the persons described in 6.3(b) prior to receiving such information, each such person shall be advised of the confidential nature of the material and shall sign a written confidentiality acknowledgment in the form attached hereto as Exhibit A to indicate that he/she has received a copy of this Protective Order No. 2 and has agreed to be bound by it. Counsel shall maintain a list of all such persons to whom the receiving party has disclosed “Confidential Insurance Information” (in accordance with paragraph 6.3(b)), as well as the originals of such written confidentiality acknowledgements. In the event that “Confidential Insurance Information” is disclosed to any of the persons described in paragraphs 6.3(c), 6.3(d), and/or 6.3(f), that receiving party shall obtain a written acknowledgment from the person receiving such

information, in the form attached hereto as Exhibit A, that he or she has received a copy of this Order and has agreed to be bound by it. Such counsel shall retain the original of such agreement and, if requested, promptly serve a copy on counsel of record. In the event that Counsel for the receiving parties discloses "Confidential Insurance Information" to any of the persons described in subparagraph 6.3(e), that Counsel for the receiving party shall obtain a written acknowledgement from the person receiving such information, in the form attached hereto as Exhibit B, that he or she has received a copy of this Protective Order No. 2 and has agreed to be bound by it. Counsel shall retain the original of such acknowledgement and, if such expert is designated as a testifying expert witness, Counsel shall serve on all other Counsel a copy of such acknowledgment immediately upon such designation. As set forth in paragraph 2.3, Corporation Counsel of the City of New York shall not be considered "Counsel" for the purpose of this provision and therefore will not have access to Confidential Insurance Information.

**6.5 Log of Disclosures of "Confidential Insurance Information."** In the event that Counsel for Plaintiffs discloses "Confidential Insurance Information" to any person described in subparagraphs 6.3(d) or 6.3(e), Counsel for Plaintiffs shall create a log that shows: (1) the name of the person to whom "Confidential Insurance Information" was disclosed, (2) the date such information was disclosed, (3) how "Confidential Insurance Information" was disclosed, (4) with whom Counsel for Plaintiffs communicated, (5) by whom "Confidential Insurance Information" was disclosed, and (6) what specific "Confidential Insurance Information" was disclosed. The log shall be filed with the Special Masters by Counsel for Plaintiffs on the first business day every quarter of the fiscal year. Each and every quarterly log shall be made available to all Counsel as defined in paragraph 2.3 upon a ~~showing~~ <sup>finding</sup> of good cause (e.g. that "Confidential Insurance Information" may have been disclosed in violation of paragraph 6.3). Disclosure by Counsel of "Confidential Insurance Information" to any person other than those described in paragraph 6.3 shall be a breach of this Protective Order No. 2 and the producing party and appropriate named parties shall be entitled to all the rights and remedies set forth in paragraph 6.10. As set forth in paragraph 2.3, Corporation "Counsel" of the City of New York shall not be considered Counsel for the purpose of this provision and therefore will not have access to Confidential Insurance Information.

**6.6 Good Faith Basis for Disclosure.** In determining whether to disclose "Confidential Insurance Information" to any persons described in Paragraphs 6.3(d), 6.3(e), and/or 6.3(f), Counsel shall act in good faith, and disclose only such "Confidential Insurance Information" as he or she reasonably believes is necessary in rendering advice to his or her client consistent with

the Disciplinary Rules of the New York Lawyers' Code of Professional Responsibility and the American Bar Association Model Rules of Professional Conduct. In disclosing "Confidential Insurance Information" to a person described in 6.3(d), the disclosing Counsel shall disclose only "Confidential Insurance Information" reasonably related to that particular person and to a particular Defendant (e.g. – information related to a particular Plaintiff allegedly having suffered injury from the fault of a particular Defendant) and shall not disclose such "Confidential Insurance Information" generally to all persons described in 6.3(d) (e.g. – a Plaintiff who has not reasonably asserted that a particular Defendant owed a duty of care to that Plaintiff must not receive "Confidential Insurance Information" concerning that Defendant; a Plaintiff whose claim can reasonably be asserted only against one Defendant must not be provided with "Confidential Insurance Information" related to a different Defendant; or, a Plaintiff who was allegedly injured in a particular year must not be provided with "Confidential Insurance Information" related to insurance coverages for policy years not applicable to that particular Plaintiff's claimed injury). Any "Confidential Insurance Information" disclosed to a person described in paragraphs 6.3(d) and/ or 6.3(f) in accordance with this paragraph shall be disclosed in a form that sets forth only insurance amounts, conditions, limitations, and exclusions for the applicable Defendant and year. Information pertaining to any Defendant's insurance structure or "towers" of insurance shall not be disclosed. As set forth in paragraph 2.3, Corporation Counsel of the City of New York shall not be considered "Counsel" for the purpose of this provision and therefore will not have access to Confidential Insurance Information.

**6.7 Expert Information.** Before disclosing any "Confidential Insurance Information" to persons described in subparagraph 6.3(e), counsel for the Plaintiffs and /or the Port Authority shall furnish to the Special Masters the curriculum vitae or other evidence of work experience for each such person without revealing his or her name. Each and every curriculum vitae shall be made available to all Counsel as defined in paragraph 2.3 upon a showing of good cause.

**6.8 Inadvertent Failure to Designate Documents, Tangible Things or Information as Confidential.** Inadvertent failure to designate any documents, tangible things, or information as "Confidential Information" or "Confidential Insurance Information" pursuant to this Protective Order No. 2 shall not constitute a waiver of any otherwise valid claim for protection, so long as such claim is asserted within fifteen (15) days of the discovery by the producing party (or any other party authorized to make such a designation(s) in accordance with paragraph 3.5) of the inadvertent failure. At such time, arrangements shall be made for the return to the producing party of all copies

of the inadvertently mis-designated documents and for the substitution, where appropriate, of properly designated copies.

**6.9 Unauthorized Use or Disclosures.** If “Confidential Information” or “Confidential Insurance Information” is used or disclosed other than as authorized by this Order, the party or person responsible for the unauthorized use or disclosure, and any other party or person who is subject to this Order and learns of the unauthorized use or disclosure, shall immediately bring such disclosure to the attention of the producing and/or designating party(ies) and the Court. Without prejudice to other rights and remedies of the producing and/or designating party(ies), those responsible for the unauthorized use or disclosure shall make every effort to obtain the return of the “Confidential Information” or “Confidential Insurance Information” (including, without limitation, from the person to whom the unauthorized disclosure was made and from any other person to whom “Confidential Information” or “Confidential Insurance Information” was directed as a direct or indirect result of the unauthorized disclosure) and to prevent further unauthorized use or disclosure on its own part or on the part of any person to whom the unauthorized use or disclosure was made. Should those responsible for the unauthorized disclosure of “Confidential Information” or “Confidential Insurance Information” fail to obtain the return of such information from the person(s) and/or entity(ies) to whom the unauthorized disclosure was made, the producing and/or designating party(ies) may seek an Order from the Court for the return of the “Confidential Information” or “Confidential Insurance Information” from such person(s) or entity(ies).

**6.10 Breach of Protective Order.** In the event of a breach of this Protective Order No. 2, the Court may hold the breaching party and/or its Counsel, as may be appropriate, in civil contempt, imposing all associated penalties, and shall have the discretion to order remedies (including monetary sanctions) commensurate with the nature and quality of the breach.

**6.11 Court Filings.** In the event that a party intends to file any motion or other paper with the Court containing “Confidential Information” and/ or “Confidential Insurance Information” such party shall first (1) deliver a courtesy copy of the motion or other paper to the Court and (2) serve the motion or other paper upon opposing Liaison Counsel and counsel for the party or parties whose “Confidential Information” or “Confidential Insurance Information” are sought to be filed. Such motion or other paper shall be exchanged in such a manner so that Counsel for each named party receiving such papers will not be able to view “Confidential Information” or “Confidential Insurance Information” for any other named party(ies). Parties receiving such motion or other paper shall have seven (7) business days to object to the filing of the pleading and/or other

paper. Consistent with Judge Hellerstein's individual Rule 4.B, the interested parties thereafter shall confer within seven (7) days after the date of such objection in an attempt to resolve the disputed issue(s) of confidentiality and/or arrive at a mutually agreeable solution (redaction or otherwise) that will protect the confidential nature of the information to be filed. If such issues are not resolved promptly, the parties shall, within thirty (30) days after the conference, seek direction from the Court in a letter as described in Judge Hellerstein's individual Rule 2.E. The letter shall not include or otherwise disclose any of the "Confidential Information" or "Confidential Insurance Information." If the objecting party elects not to submit a letter pursuant to Judge Hellerstein's individual Rule 2.E with respect to documents to which an objection has been made, the designation of confidentiality shall be deemed withdrawn.

**6.12 Court Database.** A different procedure shall apply with respect to "Confidential Information" that may be contained or reflected in the Court database of Core Discovery response information that the Court, Special Masters and Liaison Counsel are currently are developing. With respect to "Confidential Information" that may be contained or reflected in the Court database, Liaison Counsel shall work with the vendor creating, administering, or maintaining the database to establish appropriate protective measures that will ensure that "Confidential Information" is disclosed only to those persons authorized (pursuant to paragraph 6.1) to receive "Confidential Information."

**6.13 Copies.** No copies of any "Confidential Information" or "Confidential Insurance Information" shall be made except by or for Counsel for the named parties in the Litigation, or by Experts who have agreed in writing to the terms hereof and only for the purposes of performing their expert assignments. Control and distribution of all "Confidential Information" or "Confidential Insurance Information" covered by this Protective Order No. 2 shall be the responsibility of the Counsel for the parties in this action.

**6.14 No Restrictions on Advice.** Nothing in this Protective Order No. 2 shall bar or otherwise restrict Counsel from rendering advice to his or her client with respect to an Action(s) or the Litigation and, in the course thereof, from relying upon his examination of materials designated as "Confidential Information" or "Confidential Insurance Information" provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such Counsel shall not disclose the contents of any materials designated as such, other than to other persons entitled to receive such information under the terms of this Order. Prior to any such communication, Counsel shall advise the client of this Protective Order and its constraints and shall advise the client that

he/she is bound by same in all regards including the possibility of contempt sanctions for improper disclosure or breach of this Protective Order. Nor shall anything in this Protective Order No. 2 preclude "Counsel" for any party from providing to its client copies of briefs or other legal papers that are filed under seal or that are designated as "Confidential Information" or "Confidential Insurance Information" provided that any such information is redacted prior to disclosure of the document. In addition, nothing in this Protective Order No. 2 shall be deemed to preclude Counsel for Plaintiffs from seeking, at an appropriate time, modification of this Protective Order No. 2 (in accordance with paragraph 9) with respect to disclosure of "Confidential Information" or "Confidential Insurance Information." Nor shall anything in this Protective Order be deemed to preclude Counsel for Defendants from opposing and arguing against any such requested modification(s).

**7. Handling After Disposition.** After the conclusion of the Litigation, whether by way of settlement, judgment or otherwise, the producing and/or designating party(ies) may request that any or all "Confidential Information" or "Confidential Insurance Information" be returned to the producing party. If return of less than all of such "Confidential Information" or "Confidential Insurance Information" is requested, the request shall specifically identify the documents or things to be returned. The attorney for each receiving party shall collect, assemble and return within thirty (30) days all such requested "Confidential Information" or "Confidential Insurance Information" including all copies, extracts and summaries thereof, including memoranda and notes relating thereto, in the possession of the receiving party, its counsel or other authorized recipients to whom the receiving party provided "Confidential Information" or "Confidential Insurance Information" but not including copies, extracts, summaries or memoranda that contain or constitute attorney work product. If requested by the producing party within ninety (90) days of the conclusion of the Litigation, all copies, extracts, summaries and memoranda that contain or constitute attorney work product shall be destroyed and the attorney for each receiving party shall certify in writing that all such copies, extracts, summaries, and memoranda have been destroyed. Receipt of returned "Confidential Information" or "Confidential Insurance Information" shall be acknowledged in writing if such an acknowledgment is requested. This Protective Order No. 2 shall survive the final conclusion of this Litigation and the Court will continue to have jurisdiction to enforce this Protective Order No. 2 and to impose any and all applicable or appropriate sanctions. Counsel shall preserve all documents, exhibits, and materials submitted to the Court.

8. **No Implied Waivers.** The entry of this Protective Order No. 2 shall not be interpreted as a waiver of the right to object, under applicable law, to the furnishing of documents, information, or things in response to discovery requests or court-ordered discovery. In addition, the entry of this Protective Order No. 2 shall not be interpreted as a waiver of the right to object, under applicable law, to a requested inspection of documents or facilities. Parties producing “Confidential Information” or “Confidential Insurance Information” in this Litigation are doing so only pursuant to the terms of this Protective Order No. 2. Neither the agreement to, nor the taking of any action in accordance with, the provisions of this Protective Order No. 2, nor the failure to object thereto, shall be interpreted as a waiver of any claim or position or defense in this action, or any other actions.

9. **Modification.** Nothing in this Protective Order No. 2 shall be deemed to preclude a party from seeking or obtaining, on an appropriate showing, additional or reduced protection from the Court with respect to the confidentiality of documents or other discovery material, or the modification of this Protective Order No. 2 with respect to particular material designated or not designated as “Confidential Information” or “Confidential Insurance Information.” In the event any party hereto seeks a Court Order to modify the terms of this Order, said party shall make such request pursuant to Judge Hellerstein’s individual Rule 2.E, by written stipulation, or noticed motion to all parties that must be served and filed in accordance with local court rules. Prior to making application for modification of this Protective Order No. 2, the parties shall confer and make a good faith effort to resolve the matter by agreement.

10. **Care In Storage.** Any person in possession of “Confidential Information” or “Confidential Insurance Information” produced by another party shall exercise reasonable and appropriate care with regard to the storage, custody, copying, and use of the “Confidential Information” or “Confidential Insurance Information” to ensure that the confidential and sensitive nature of same is maintained. Counsel for the receiving party is responsible for exercising reasonable and appropriate care with regard to the storage, custody, copying, and use of “Confidential Information” or “Confidential Insurance Information” regardless of whether such information is in the possession of Counsel for the receiving party or their necessary clerical and support personnel, including, but not limited to, secretaries, paralegal and clerks.

11. **No Admission.** Neither this Protective Order No. 2 nor the designation of any item as “Confidential Information” or “Confidential Insurance Information” shall be construed as an

admission that such material, or any testimony concerning such material, would be admissible in evidence in this litigation or in any other proceeding.

**12. Parties' Own Documents.** This Protective Order No. 2 shall in no way restrict the parties in their use of their own documents and information, and nothing in this Order shall preclude any party from voluntarily disclosing its own documents or information to any party or nonparty.

**13. Privileged and Inadvertent Production.** Nothing in this Protective Order No. 2 shall be deemed to require the production, or preclude the redaction, of a document that the producing party believes is protected by the attorney-client privilege, attorney work product doctrine, joint defense or common interest privilege, self-critical analysis privilege, deliberative process privilege, public interest privilege, official information privilege, state secrets privilege, law enforcement privilege, any other privilege or qualified privilege, or competitively sensitive trade secret or confidential business information, the disclosure of which would materially and adversely affect a party absent redaction. The receiving party reserves its right to challenge a claim by the producing party that a document is subject to any privilege. Inadvertent production of any such document shall not constitute a waiver of privilege or other protection, and any such document (including all copies) shall be returned to the producing party immediately upon the request of the producing and/or designating party(ies). Any notes made by any party about any inadvertently produced documents protected by such privileges or other protection shall be destroyed by the party who made the notes after arrangements are made for the return of the inadvertently produced documents to the producing party. The provisions of this paragraph also shall apply to documents that are protected by privilege or other protection that were inadvertently made available for inspection or review. Such inspection or review shall not constitute a waiver of any privilege or other protection from disclosure subsequently asserted by the producing and/or designating party(ies).

**14. No Effect on Other Rights.** Except as provided herein, this Protective Order No. 2 shall in no way abrogate or diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party with respect to "Confidential Information" or "Confidential Insurance Information."

**15. Compulsory Disclosure to Third Parties.** If another court or administrative agency subpoenas or orders production of "Confidential Information" or "Confidential Insurance Information" that a party has obtained under the terms of this Protective Order No. 2, such party shall, if there are fewer than ten (10) business days to comply, within two (2) business days -- or if more than ten (10) days, at least seven (7) business days -- prior to the due date of compliance, notify

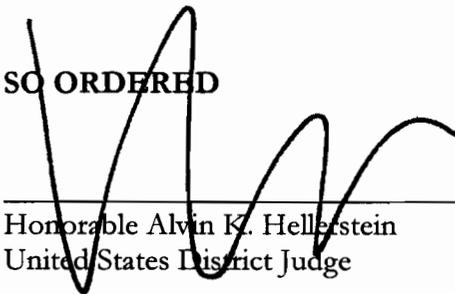
the producing and/or designating party(ies) of the pendency of the subpoena or order in writing, and shall not produce the "Confidential Information" or "Confidential Insurance Information" until the producing and/or designating party(ies) have had reasonable time to take appropriate steps to protect the material at its sole cost and expense. It shall be the responsibility of the producing and/or designating party(ies) to obtain relief from the subpoena or order prior to the due date of compliance, and to give the producing and/or designating party(ies) an opportunity to obtain such relief, the party from whom the information is sought shall not make the disclosure before the actual due date of compliance set forth in the subpoena or order. Nothing herein shall require the party to whom the subpoena or production order is directed to risk the imposition of a fine, cost, penalty, charge, or any proceeding for the failure to honor the subpoena or order to produce.

Dated: New York, New York

September \_\_\_\_, 2008

(effective as of February 29, 2008)

SO ORDERED

  
Honorable Alvin K. Hellerstein  
United States District Judge

*The parties may agree as to the fee.  
However, the court remains free to deal  
with any and all items in a manner  
that permits open, accessible, fair, and efficient  
judicial proceedings. On this condition, the  
court approves the protective order*

*Alvin K. Hellerstein*  
U.S. Dist. Judge