

EXHIBIT

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**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Land O' Lakes, Inc.,

Case No.: 0:09-cv-00-693-PJS-JSM

Plaintiff,

vs.

Employers Mutual Liability  
Insurance Company of Wisconsin  
and The Travelers Indemnity  
Company,

**PROTECTIVE ORDER**

Defendants,

vs.

White Mountains Reinsurance  
Company of America, successor to  
Mutual Service Casualty Insurance  
Company, and Doe Insurer  
Defendants 1-10,

Third-Party Defendants.

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Based upon the parties' Stipulation for Protective Order and pursuant to Fed. R.  
Civ. P. 26(c), IT IS HEREBY ORDERED:

1. As used in this Protective Order, the following terms have the following meanings:
  - a. "Attorneys" means counsel of record for the Parties in this action.

b. “Confidential Materials” means Materials designated as “Confidential” pursuant to paragraph 4 below;

c. “Court Filings” means all papers filed with the court in this action, including, without limitation, pleadings, motions, briefs, affidavits and exhibits.

d. “Deposition Materials” means all deposition transcripts, deposition exhibits and deposition recordings, whether video or audio, in this action.

e. “Discovery Responses” means all responses to interrogatories, requests for production or requests for admission, and all other written discovery responses in this action.

f. “Documents” means all documents and tangible things within the scope of Fed. R. Civ. P. 34 produced or provided in this action by a Party or non-Party to one or more other Parties, including, without limitation, documents produced in response to requests for production in this action.

g. “Expert Reports” means all expert reports and supporting materials in this action.

h. “Materials” means (i) Deposition Materials; (ii) Discovery Responses; (iii) Documents; (iv) Expert Reports; and (v) any other written information exchanged by the Parties in this action.

i. “Parties” means Land O’ Lakes, Inc., Employers Insurance Company of Wausau, f/k/a Employers Insurance of Wausau, A Mutual Company, The Travelers Indemnity Company, and White Mountains Reinsurance Company of America.

j. “Written Assurance” means an executed document in the form attached as Exhibit A.

2. Pursuant to paragraph 4 below, a Party may designate as “Confidential” any Materials it, in good faith, contends constitute or contain, in whole or in part, proprietary, trade secret, customer or personal information, confidential research, development or commercial information, or other confidential or sensitive business information.

3. Any Party or other person who receives Confidential Materials from another Party or non-Party in this action shall use the Confidential Materials, including information contained in the Confidential Materials, solely for purposes of this action and shall not, directly or indirectly, transfer, disclose, or communicate in any way Confidential Materials, or their contents, to any person not authorized in paragraph 6 below. Prohibited purposes include, but are not limited to, use of Confidential Materials, or their contents, by a Party or person who receives Confidential Materials in this action from another Party or non-Party for competitive purposes or the prosecution of actions other than this action.

4. Materials may be designated as “Confidential” as follows:

a. A Document produced or provided in this action by a Party to any other Party may be designated as “Confidential” by marking the initial page and any other page of the Document that constitutes or contains confidential information with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”.

b. In lieu of marking the original of a Document pursuant to paragraph 4(a) above, a Party may designate a Document as “Confidential” by informing the other

Parties, in writing, of such designation; however, any copies of the Document produced or provided in this action to the other Parties must be marked with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”.

c. Deposition testimony and/or Deposition Materials may be designated as “Confidential” by indicating on the record at the deposition the testimony and/or Deposition Materials designated as such. Regardless of whether deposition testimony and/or Deposition Materials are designated as “Confidential” on the record at the deposition, all deposition testimony and Deposition Materials related thereto shall be treated by each Party as “Confidential Materials” from the commencement of the deposition until the earlier of: (i) fifteen (15) business days after said Party’s receipt of the deposition transcript or (ii) said Party’s receipt of the notice referenced in paragraph 4(d) below.

d. Deposition Materials may be designated as “Confidential” by notifying all Parties, in writing, within ten (10) business days of a Party’s receipt of a deposition transcript of the Deposition Materials so designated. Each Party shall attach a copy of any such written statement to the front of the Deposition Materials, including each copy thereof, in its possession, custody or control, and shall mark the front of such Deposition Materials with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”.

e. Discovery Responses, Expert Reports and any other written information exchanged in this action by the Parties may be designated as “Confidential” by marking the front page and any other page of the Document that constitutes or

contains confidential information with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”.

5. Non-Parties producing Documents and/or providing deposition testimony in this action may designate such Documents, deposition testimony and/or Deposition Materials as “Confidential” pursuant to paragraph 4 above. A copy of the Protective Order shall be served with any subpoena served in connection with this action. All Documents produced by a non-Party in this action shall be treated as “Confidential” for a period of fifteen (15) days from the date of their production and, during that 15-day period, any Party and/or the producing non-Party may designate such Documents as “Confidential” pursuant to paragraph 4 above.

6. Confidential Materials may be disclosed only to the following authorized persons:

- a. the Court in this action, including its judicial officers and personnel;
- b. Attorneys and their office associates, legal assistants, and stenographic and clerical employees;
- c. the directors, officers, employees (present or former) and agents, including, without limitation, in-house counsel and legal assistants, secretarial staff and clerical staff of the Parties who are involved or consulted in connection with this action;
- d. court reporters retained to transcribe or record testimony in this action;

e. outside consultants, investigators, expert witnesses or expert consultants, including their staff, retained in connection with this action by a Party or Attorneys;

f. Any person or entity to whom any Party is required by law or contract to disclose Confidential Materials;

g. court reporting services; imaging, copying and microfilm vendors; and litigation support vendors (including jury consultants and mock jury vendors) retained by a Party or Attorneys in connection with this action; and

h. witnesses and/or potential witnesses, provided that (except for those witnesses and/or potential witnesses that also fall within paragraph 6(c) above) any witness or potential witness who does not execute a Written Assurance shall not be allowed to retain Confidential Materials, but may inspect them, as necessary, for purposes of preparing to provide and/or providing deposition or trial testimony in this action.

7. Any person identified in paragraphs 6(e) or 6(g) above to whom a Party desires to disclose Confidential Materials that the Party received in this action shall first execute a Written Assurance before such Confidential Materials may be disclosed to such person. All other Parties shall be notified at least ten (10) days prior to disclosure of any such Confidential Materials to any such person who is known by the Party seeking to make such disclosure to be an employee or agent of, or consultant to, any competitor of the Party or the non-Party who designated the Materials at issue as Confidential Materials. Such notice shall identify the person to whom such disclosure is sought by

name, title and employer. If a Party objects in writing to such disclosure within ten (10) days after receipt of notice, no disclosure shall be made until the Party seeking to make such disclosure obtains the prior approval of the objecting Party or the Court in this action.

8. All deponents, except persons authorized under paragraph 6(c) above, shall be given a copy of the Protective Order by the Party taking the deposition and said Party shall use reasonable efforts to have the deponent execute a Written Authorization prior to the deposition. If the deponent refuses to execute a Written Authorization, the Party taking the deposition shall advise all other Parties of this fact prior to the deposition. A deponent's refusal to execute a Written Authorization does not prohibit a Party from using and/or inquiring about Confidential Materials at the deposition, but any such deponent shall not be permitted to retain or take from the deposition any Confidential Materials. Further, while such deponent will be provided with a complete transcript of his or her deposition, if requested, for purposes of correcting and signing the transcript, said deponent shall not be permitted to retain any portions of the transcript and/or exhibits designated as "Confidential".

9. If a "Confidential" designation is made during the course of a deposition pursuant to paragraph 4(c) above, the reporter and videographer, if any, shall indicate in the deposition transcript and/or deposition videotape the portions of the deposition and/or any deposition exhibits designated as "Confidential," including, without limitation, by listing in the deposition transcript summary the beginning and ending pages and lines and/or the deposition exhibits designated as "Confidential" and marking the cover of the

deposition transcript with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”. Any other media relating to any such deposition, including, without limitation, videotape, audio tape or computer disk, shall be clearly marked with the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”. Nothing in the Protective Order shall preclude a Party from designating an entire deposition, deposition transcript and/or deposition exhibits as “Confidential”.

10. Nothing in the Protective Order shall prevent a Party from using Confidential Materials and/or inquiring about Confidential Materials during depositions in this action. The Party so using and/or inquiring about Confidential Materials shall designate said portion of the deposition as “Confidential” pursuant to paragraphs 4(c) or 4(d) above. The Party who produced the Confidential Materials used and/or inquired about at any such deposition shall have the right to exclude any person not authorized to receive Confidential Materials under paragraph 6 above from the portion of the deposition concerning such Confidential Materials.

11. Nothing in the Protective Order shall prevent a Party from using Confidential Materials and/or inquiring about Confidential Materials at hearings or other proceedings in court in this action. The Party so using and/or inquiring about Confidential Materials shall request, prior to disclosure of Confidential Materials, that appropriate steps be taken to prevent disclosure of Confidential Materials to persons not authorized to receive them under paragraph 6 above, including, without limitation, that any unauthorized person not be permitted to attend the portion of the hearing or other proceeding concerning such Confidential Materials and that the portion of any transcript

of the hearing or other proceeding concerning such Confidential Materials be designated as “Confidential” and not subject to examination or disclosure, except to persons authorized under paragraph 6 above.

12. All Court Filings that include or reference Confidential Materials shall be filed with the Court under seal in compliance with the Electronic Case Filing Procedures for the District of Minnesota. Prior to disclosure of Confidential Materials at trial or hearing, the Parties may seek further protections against public disclosure from the court.

13. Any Party who inadvertently fails to designate any Materials as “Confidential” shall have ten (10) days from the discovery of its oversight to correct its failure. Such failure shall be corrected by providing: (a) written notice to all Parties of the error; and (b) replacement copies to all Parties of any Materials that were inadvertently produced without being designated as “Confidential” pursuant to paragraph 4 above. Upon receipt of such notice, any Party who received such inadvertently produced Confidential Materials shall make reasonable efforts to: (a) retrieve any such Materials that were distributed to persons not authorized to receive Confidential Materials; and (b) retrieve the originals and all copies of any such Materials and replace them with the replacement copies.

14. The Parties agree that the provisions of Rule 502 of the Federal Rules of Evidence apply to this action. In addition to the provisions set forth in Rule 502, the Parties further agree that any Party that inadvertently discloses or produces in this action Materials that it considers privileged or otherwise protected from discovery, in whole or in part, shall not be deemed to have waived any applicable privilege or protection by

reason of such disclosure or production if, within ten (10) days of the date that it discovers that such Materials were inadvertently disclosed or produced, it gives written notice to each receiving Party identifying the Materials in question, the asserted privilege or protection, and the grounds therefor, with a request that all copies of the Materials be returned or destroyed. Upon receipt of any such notice, each receiving Party shall refrain from any effort to use or rely upon the Materials in question, for any purpose, until the privilege claim has been resolved in accordance with paragraph 15 below.

15. Within seven (7) days of receiving any notification under paragraph 14 above, each receiving Party shall return or destroy all copies of the inadvertently produced Materials, as requested in such notice, and provide written confirmation to the producing Party of such action. If the privilege claim is disputed, the Party returning such inadvertently produced Materials may thereafter seek re-production of any such Materials pursuant to applicable law.

16. Any Party that receives Materials from another Party in this action that it knows or reasonably should know is likely to be subject to a claim of privilege or other protection shall so inform the producing Party and all other Parties in writing and shall identify the Materials in question within seven (7) days of the date it becomes aware that potentially privileged Materials were produced or otherwise provided by the producing Party. Upon receipt of any such notice, all Parties shall refrain from any effort to use or rely upon the Materials in question, for any purpose, until the privilege claim has been resolved in accordance with paragraph 17 below.

17. Within ten (10) days of receiving any notification under paragraph 16 above, the producing Party shall either: (a) confirm in writing that it asserts a privilege claim and request that all receiving Parties return or destroy all copies of the Materials in question, or (b) confirm in writing that no privilege or protection is claimed. If a producing Party asserts a privilege claim in response to a notice under paragraph 16 above, then, within seven (7) days of the producing Party's written confirmation of the privilege claim, each receiving Party shall return or destroy all copies of the Materials in question, as requested, and shall provide written confirmation to the producing Party of such action. If the privilege claim is disputed, the Party returning such inadvertently produced documents may thereafter seek re-production of any such Materials pursuant to applicable law.

18. This Protective Order is intended to protect all Parties to the fullest extent permissible by law against any unintended waiver of the attorney-client privilege and/or the attorney work product doctrine that might otherwise arise from the inadvertent disclosure of privileged or protected Materials. The Parties' execution of the Stipulation for Protective Order, and compliance with its terms, shall be understood, for all purposes within and outside this action, to constitute reasonable and prompt efforts to preserve privileges and protections from discovery in respect to any inadvertently disclosed Materials.

19. Any Party may request a change in the designation of any Materials designated as "Confidential." Any such Materials shall continue to be treated as

“Confidential Materials” until the change is completed. If the requested change in designation is not agreed to by all Parties, the Party seeking the change may move the Court for appropriate relief, providing notice to any non-Party whose designation of Materials as “Confidential” in the action may be affected. The Party asserting that the Materials in question are “Confidential Materials” shall have the burden of proving that the information in question is within the scope of protection afforded by Fed. R. Civ. P. 26(c).

20. Within sixty (60) days of the termination of this action, including any appeals, any Party may request, in writing, that all other Parties: (a) either destroy or return to the requesting Party all Confidential Materials, including copies of all such documents, produced or provided by the requesting Party and designated by the requesting Party for destruction or return, and/or (b) destroy all extracts and/or data derived from such Confidential Materials. Certification as to such return or destruction shall be provided to the requesting Party within sixty (60) days after receipt of the request for return or destruction of Confidential Materials under this paragraph. Attorneys shall be entitled to retain, however, a set of all Confidential Materials filed with the Court and all correspondence generated in connection with the action.

21. Any Party may apply to the Court for a modification of the Protective Order, and nothing in the Protective Order shall be construed to prevent a Party from seeking further enhancements or limitations to the confidentiality protections provided by the Protective Order, as may be appropriate.

22. Neither the Protective Order nor any action taken in accordance with the Protective Order shall be construed as a waiver of any claim or defense in the action or of any position as to relevance, discoverability or admissibility of any Materials.

23. Nothing in this Order shall be inferred as depriving any Party of its right to contend that discovery not be had including, without limitation, so as to protect a Party or person from annoyance, embarrassment, oppression, or undue burden or expense, pursuant to Fed. R. Civ. P. 26(c)(1)(A); or that a trade secret or other confidential research, development, or other commercial information not be disclosed, pursuant to Fed. R. Civ. P. 26(c)(1)(G).

24. Nothing in this Protective Order shall limit or restrict the manner in which any Party may use and/or disclose its own Confidential Materials. A Party may use and/or disclose its own Confidential Materials in any manner it sees fit in this action or for any other purpose and without the need to request prior consent from any other Party or the court in this action. The restrictions set forth in the Protective Order on the use and disclosure of Confidential Materials does not apply to a Party's use and/or disclosure of its own Confidential Materials.

25. Nothing in the Protective Order shall prevent a Party from using or continuing to use any Materials that are publicly-available or publicly-known through no unauthorized act of such Party (such as Materials obtained by a Party through a public records request to a governmental entity) or which are lawfully obtained by the Party through means other than discovery in this action from the Party who claims that the Materials in question are Confidential Materials.

26. The obligations imposed by the Protective Order shall survive the termination of this action. Within sixty (60) days following the expiration of the last period for appeal from any order issued in connection with this action, the Parties shall remove any Confidential Materials from the office of the Clerk of Court. Following that 60-day period, the Clerk of Court shall destroy any remaining Confidential Materials.

**BY THE COURT:**

Dated: March 2, 2010

*s/ Janie S. Mayeron*

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JANIE S. MAYERON

United States Magistrate Judge

**EXHIBIT A**  
**WRITTEN ASSURANCE**

\_\_\_\_\_ declares that:

I reside at \_\_\_\_\_ in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.

My telephone number is \_\_\_\_\_. I am currently employed by \_\_\_\_\_, located at \_\_\_\_\_, and my current job title is \_\_\_\_\_.

I have read and I understand the terms of the Protective Order dated \_\_\_\_\_, filed in Case No. 0:09-cv-00-693, pending in the United States District Court for the District of Minnesota. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any Materials designated as “Confidential” obtained pursuant to such Protective Order, or the contents of such Materials, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such Materials except for the purposes of this action and pursuant to the terms of the Protective Order.

No later than thirty (30) days after receipt of a request from the attorney from whom I received the Materials, I shall return to the attorney any Materials in my

possession designated “Confidential,” and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such Materials.

I submit myself to the jurisdiction of the United States District Court for the District of Minnesota solely for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)