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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ROYAL & SUN ALLIANCE )  
INSURANCE PLC, a United Kingdom )  
Public Limited Company; CNA )  
INSURANCE CO LTD, a United )  
Kingdom Limited Company; and )  
CERTAIN UNDERWRITERS AT )  
LLOYD'S, LONDON, SUBSCRIBING )  
TO POLICY NO. PC0903196, )  
Plaintiff, )  
v. )  
BAX GLOBAL, INC., a corporation; )  
SCHENKER, INC., a corporation; and )  
DOES ONE through FIFTY, )  
Defendants. )

Case No.: SACV10-01829 CJC  
(RNBx)

~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER

Judge: The Hon. Carmac J. Carney

WHEREAS the parties to this action agree that certain information, documents and things requested from the parties or from third-parties during discovery should be kept confidential in order to protect the legitimate business interests and privacy rights of the parties, third-parties and their respective business associates, and further agree that such information, documents and things may be eligible for protection under Fed. R. Civ. P. 26(c), and

WHEREAS the parties have stipulated to and request that the Court enter this Stipulated Protective Order,

1 IT IS HEREBY ORDERED that, during the pendency of this action or until  
2 this order is amended or superseded, the parties will follow the procedures set  
3 forth below with respect to information, documents or things received from any  
4 party or third-party.

5 **1. Proceedings and Form of Information Governed**

6 This Stipulated Protective Order (“Protective Order”) shall govern any  
7 document, information or other thing furnished by any party or nonparty (a  
8 “producing party”) to any other party or nonparty in connection with this action  
9 that is appropriately designated under the provisions of this Order. The form of  
10 information protected includes, but is not limited to, documents produced in  
11 discovery, responses to requests to produce documents or other things, responses  
12 to interrogatories, responses to requests for admissions, responses to subpoenas,  
13 deposition testimony and exhibits, and all copies, extracts, summaries,  
14 compilations, designations and portions of any of them. This Protective Order  
15 shall be binding on the parties when signed regardless of whether or when the  
16 Court enters the Order. Nothing shall prevent a party from moving for an Order  
17 providing any of the additional protections available under Fed. R. Civ. P. 26(c)  
18 for good cause shown.

19 **2. “Confidential Information” Defined**

20 The term “Confidential Information” means any document, information or  
21 thing that is designated “CONFIDENTIAL.” Any document, information or thing  
22 may be designated CONFIDENTIAL if the producing party in good faith determines  
23 it to contain confidential, commercially sensitive or proprietary information,  
24 including information related to any of the following: technical data, research and  
25 development information, marketing or other business plans, product or service  
26 information, customer information, trade secrets, competitive information,  
27 financial information of the producing party or another party, or any other  
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1 information of such sensitivity to warrant treatment as Confidential Information,  
2 including information in written, oral, electronic, graphic, pictorial, audiovisual or  
3 other form, whether it is a document, information contained in a document, item  
4 produced for inspection, information revealed during a deposition, information  
5 revealed in an interrogatory answer or otherwise. A receiving party may use  
6 Confidential Information designated as such under this Protective Order solely for  
7 the purpose of prosecuting or defending the claims asserted in this action and for  
8 no other purpose without leave of Court.

9 **3. Designation of Information for Protection under This Order**

10 **(a) Timing and Method**

11 Only documents, information or things the producing party reasonably  
12 believes to qualify for protection under Fed. R. Civ. P. 26(c) may be designated as  
13 "CONFIDENTIAL." That designation may be made by stamping or otherwise  
14 marking the material prior to production with the word "CONFIDENTIAL." In  
15 the case of written material, documents or tangible items, the party producing the  
16 information shall designate it as "CONFIDENTIAL" when it provides the  
17 information to the other party ("the receiving party"). In the case of deposition  
18 testimony, paragraphs 11 and 12 shall apply.

19 **(b) Inadvertent Production**

20 If a party or nonparty, through inadvertence, produces or provides any  
21 Confidential Information without first labeling, marking or designating it as  
22 "CONFIDENTIAL" then the producing party may, within thirty days after the  
23 discovery of the inadvertent production, give written notice to the receiving party  
24 or parties that the document, thing, transcript or other information is  
25 "CONFIDENTIAL" and should be treated in accordance with the provisions of  
26 this Protective Order. The receiving party or parties must thereafter treat the  
27 document, thing, transcript or other information accordingly from the date such  
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1 notice is received. No party shall assert that disclosure waived any privilege or  
2 any protection provided under the terms of this Protective Order. Disclosure of  
3 the document, thing, transcript or other information prior to receipt of notice to  
4 persons not authorized to receive it shall not be deemed a violation of this  
5 Protective Order; the receiving party shall promptly advise those persons to whom  
6 it made disclosure that the material disclosed was "CONFIDENTIAL" and must  
7 be treated in accordance with this Protective Order.

8 **4. Disclosure of "CONFIDENTIAL" Information**

9 The receiving party may disclose documents, information contained therein,  
10 other information and other things designated "CONFIDENTIAL, subject to  
11 paragraph 5, below, to and only to:

12 (a) the attorneys of record in this action and any non-in-house  
13 attorneys of a party retained in this action to consult on the litigation, and  
14 their associates, clerks, legal assistants, stenographic and support personnel,  
15 and independent organizations retained by those attorneys to provide  
16 litigation support services in this action, including their employees;

17 (b) independent experts and consultants retained in this action and  
18 their employees;

19 (c) officers, directors or employees of a party ;

20 (d) in-house counsel and their respective legal assistants and other  
21 support personnel;

22 (e) persons permitted under paragraph 10 below;

23 (f) court reporters, videographers and court personnel, provided  
24 the Confidential Information is returned to the party utilizing the  
25 Confidential Information at the conclusion of the deposition, hearing or  
26 trial, as the case may be;

1 (g) trial consulting services, including mock jurors, retained by a  
2 party;

3 (h) photocopy, document imaging and database services and  
4 consultants retained by counsel to set up, maintain or operate computer  
5 systems, litigation databases or to convert data for inclusion in a database;

6 (i) other persons hereafter designated by written agreement of all  
7 parties in the Actions or by Order of the Court, permitting disclosure;

8 (j) witnesses during discovery and witnesses for trial or for  
9 purposes of preparation of such witnesses; and

10 (k) the party's insurers, and its agents, employees and attorneys;  
11 and

12 (l) the Court, its clerks, deputies and staff.

13 **5. Declarations by Persons Receiving Confidential**  
14 **Information and Disclosure to Experts**

15 (a) As a condition precedent to disclosure of Confidential  
16 Information to the individuals identified in subparagraphs 4(b), (g), (i) and (j),  
17 each individual must acknowledge receipt and understanding of this Protective  
18 Order and agree (i) to be bound by it, (ii) to use Confidential Information solely  
19 for this action and (iii) not to disclose Confidential Information to any person,  
20 firm, corporation or other entity not permitted to have access to it pursuant to the  
21 terms of this Protective Order. A form of undertaking for this purpose is attached  
22 as Exhibit A. Counsel who has provided Confidential Information to an  
23 individual shall maintain a copy of each executed Exhibit A.

24 **6. Use of Confidential Information**

25 The receiving party and persons to whom it is disclosed may use  
26 Confidential Information solely in preparation for trial including motion practice  
27 and discovery, mediation, and during the trial of this action and any post trial and  
28 appellate proceeding concerning this action and may not use it for any business or

1 other purpose, unless the disclosing party agrees in writing or the Court issues an  
2 Order permitting such use. No person who receives Confidential Information shall  
3 disclose it to any person not permitted under this Protective Order to receive it.

4 The parties may by written stipulation signed by counsel for each party  
5 provide for exceptions to this Order. Any party may seek an Order of this Court  
6 modifying this Protective Order. This Order shall not prevent a party from  
7 contending in Court that information is or is not in fact Confidential Information.

#### 8 **7. Court Procedures**

9 In accordance with Local Rule 79-5.1, if any papers to be filed with the  
10 Court contain information and/or documents that have been designated as  
11 "Confidential," the proposed filing shall be accompanied by an application to file  
12 the papers or the portion thereof containing the designated information or  
13 documents (if such portion is segregable) under seal; and the application shall be  
14 directed to the judge to whom the papers are directed. For motions, the parties  
15 shall publicly file a redacted version of the motion and supporting papers.

#### 16 **8. Party's Own Information**

17 The restrictions on the use of Confidential Information established by this  
18 Protective Order are applicable only to the use of Confidential Information  
19 received by a party from another party or from a nonparty. A party is free to do  
20 whatever it desires with its own Confidential Information.

#### 21 **9. Objections**

22 A party shall not be obligated to challenge the propriety of a confidentiality  
23 designation at the time made, and a failure to do so shall not preclude a subsequent  
24 challenge.

25 A party may object to any designation of Confidential Information under  
26 this Order using the following procedure:

- 27 (a) The objecting party or person shall give counsel of record for  
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1 the party asserting the protection written notice, stating the reason for its  
2 objection and specifying the document by production number, information  
3 or other thing as to which the party objects.

4 (b) If the parties cannot reach agreement concerning the matter  
5 within five business days after delivery of the notice or such shorter time as  
6 the Court may allow, then the objecting party may serve a letter on all other  
7 parties requesting a conference under Local Rule 37-1. After the parties  
8 have completed a Local Rule 37-2 stipulation, the objecting party may file  
9 and serve a motion for an Order of the Court to alter its designation as  
10 Confidential Information. The objecting party must file its motion within  
11 ten business days after the parties' execution of the Local Rule 37-2  
12 stipulation. The motion shall be set for the earliest possible date on the  
13 Court's motion calendar and shall not be continued without the consent of  
14 all parties. The protections of this Order shall continue to apply to the  
15 objected-to document, information or thing pending a decision by the Court.  
16 The designating party has the burden to establish that the challenged  
17 Confidential Information is confidential and entitled to the protection this  
18 Protective Order provides.

19 **10. Disclosure to Author or Addressee**

20 Nothing shall prohibit a party, or its counsel, from disclosing any document  
21 designated as "CONFIDENTIAL" to the person who is the author, addressee or  
22 prior recipient of the document. None of the provisions of this Order shall apply  
23 to that disclosure.

24 **11. Depositions**

25 Any Party or person giving testimony in these proceedings may designate a  
26 portion of his or her testimony deemed to contain Confidential Information by  
27 advising the court reporter. The reporter shall separately transcribe those portions  
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1 of the testimony so designated and shall mark the face of the transcript with the  
2 words "CONFIDENTIAL." In addition, any party may designate depositions or  
3 portions of them as Confidential Information in accordance with this Protective  
4 Order by notifying the other party in writing within ten business days of receipt of  
5 the transcript. Until that time has expired, every deposition transcript shall be  
6 considered Confidential Information in its entirety. In the event a party designates  
7 a deposition or a portion of it as Confidential Information, the portion of the  
8 transcript so designated shall be separated and marked "Confidential".

9 **12. Exclusion From Deposition**

10 Whenever any documents, information or other things designated as  
11 "CONFIDENTIAL" are to be discussed or disclosed in a deposition, any party  
12 claiming confidentiality may exclude from the room any person, party or  
13 representative of party who is not entitled to receive documents, information or  
14 other things designated as "CONFIDENTIAL" as appropriate, unless this Court  
15 orders otherwise.

16 **13. Subpoenas**

17 In the event any person or party subject to this Order having possession,  
18 custody or control of any Confidential Information receives a subpoena or other  
19 process or Order to produce information in a different proceeding or case, that  
20 person or party shall promptly notify in writing the attorneys of record in this case  
21 of the party claiming such confidential treatment of the item, document or  
22 information sought by such subpoena or other process or order, shall furnish those  
23 attorneys of record in this case with a copy of said subpoena or other process or  
24 order, and shall provide reasonable cooperation with respect to any procedure to  
25 protect that information. If the party asserting confidentiality makes a motion to  
26 quash or modify a subpoena, process or order, unless otherwise ordered by a court  
27 of competent jurisdiction, there shall be no disclosure of the subject matter  
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1 objected to pursuant to the subpoena, process or order until the Court having  
2 jurisdiction over the controversy has ruled upon the motion and then only in  
3 accordance with the ruling so made. If no such motion is made despite a  
4 reasonable opportunity to do so, any person or party subject to this Order who  
5 receives any subpoena or other process or order in a different proceeding or case  
6 shall be entitled to comply with such subpoena process or order. Nothing in this  
7 Protective Order is intended or should be construed as authorizing a party to  
8 disobey a lawful subpoena issued in another action.

9 **14. No Waiver**

10 Other than as specified in this Protective Order, neither the taking of nor the  
11 failure to take any action to enforce the provisions of this Protective Order, nor the  
12 failure to object to any designation shall constitute a waiver of any right to seek  
13 and obtain protection or relief in this action or any other action, retroactively or  
14 otherwise, including, but not limited to, the right to claim that any information is  
15 or is not proprietary to any party or nonparty, is or is not entitled to protection  
16 under this Protective Order, does or does not embody trade secrets of any party or  
17 nonparty or is not then subject to discovery. The procedures this Order sets forth  
18 shall not affect the rights of the parties to object to discovery on grounds other  
19 than those related to trade secrets or proprietary information claims, nor shall it  
20 relieve a party of the necessity of proper response to discovery devices. The  
21 execution of this agreement by any party shall not prevent that party from  
22 objecting to any discovery request on grounds allowed by the Federal Rules of  
23 Civil Procedure.

24 **15. No Probative Value**

25 This Protective Order shall not abrogate or diminish any contractual, statutory  
26 or other legal obligation or right of any party or person with respect to any  
27 Confidential Information. The fact that information is designated  
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1 "CONFIDENTIAL" under this Protective Order shall not be deemed to be  
2 determinative of what a trier of fact may determine to be confidential or proprietary  
3 and shall not be used for or against the party asserting, invoking or arguing for or  
4 against the designation for any purpose. This Protective Order is without prejudice  
5 to the right of any party or nonparty to bring before the Court the question of: (i)  
6 whether any particular material is or is not confidential; (ii) whether any particular  
7 information or material is or is not entitled to a greater or lesser degree of protection  
8 than this Protective Order provides; or (iii) whether any particular information or  
9 material is or is not relevant to any issue of this case. This Protective Order shall not  
10 be admissible during the trial of this action, nor shall the jury be advised of its  
11 contents. The fact that any information is disclosed, used or produced in discovery  
12 or trial shall not be construed as an express or implied determination or deemed  
13 admissible or offered in any action or proceeding before any court, jury, agency or  
14 tribunal as evidence of or concerning whether or not information is confidential or  
15 proprietary.

16 **16. Return of Information**

17 Within sixty days after the conclusion of this action whether by judgment and  
18 exhaustion of all appeals or by settlement, and upon written request made by the  
19 producing party, all documents and information made subject to this Protective Order,  
20 and all copies, shall be, at the direction of the producing party, (i) delivered to the  
21 party that furnished such Confidential Information or (ii) in lieu of delivery to the  
22 furnishing party, destroyed, in which event the receiving party, upon request, shall  
23 give written notice of such destruction to the producing party. As part of compliance  
24 with a written request, the attorneys of record for the receiving party shall ensure that  
25 all the Confidential Information in the possession, custody or control of their clients,  
26 experts and consultants is also destroyed or returned to the party that furnished such  
27 Confidential Information. In no event shall a party, its experts or consultants retain  
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1 a copy of any Confidential Information produced to it. Notwithstanding the  
2 foregoing, counsel of record in this action may retain one copy of the production  
3 materials, all pleadings and motions filed with the Court or served upon counsel and  
4 may retain one copy of each transcript of any depositions taken in this action,  
5 including any exhibits referenced, provided, however, that access to Confidential  
6 Information contained in pleadings, depositions and exhibits shall be limited to  
7 counsel of record for its own internal use and not be provided to anyone without the  
8 express prior written permission of counsel of record for the producing party or  
9 pursuant to a Court order.

10 **17. Miscellaneous**

11 Nothing in this Protective Order shall preclude any party to the  
12 proceeding or their attorneys from:

13 (a) Disclosing or using, in any manner or for any purpose, any  
14 information, documents or things obtained from a source other than discovery  
15 or to which a party has a right of access independent of discovery.

16 (b) Disclosing or using, in any manner or for any purpose, any  
17 information, document or thing that is at the time of production or disclosure  
18 or subsequently becomes, through no wrongful act or failure to act on the part  
19 of the receiving party, generally available to the public through publication or  
20 otherwise or is already rightfully in the possession of the receiving party at the  
21 time of production.

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**18. Court's Jurisdiction**

The provisions of this Protective Order regarding the use and disclosure of Confidential Information shall survive the termination of this action. The Court shall retain jurisdiction with respect to this Protective Order.

IT IS SO ORDERED.



Dated: May 31, 2011

\_\_\_\_\_  
The Hon. Robert N. Block  
United States Magistrate Judge

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**EXHIBIT A**

**DECLARATION REGARDING RECEIPT OF CONFIDENTIAL INFORMATION**

I, \_\_\_\_\_, declare that:

1. My address is \_\_\_\_\_, and the address of my present employer is \_\_\_\_\_.

2. My present occupation or job description is \_\_\_\_\_.

3. My present relationship to plaintiff/defendant is \_\_\_\_\_.

4. I have received a copy of the Stipulated Protective Order (the "Protective Order") in this action.

5. I have carefully read and understand the provisions of the Protective Order, agree to be bound by it and specifically agree I will not use or disclose to anyone any of the contents of any Confidential Information received under the protection of the Protective Order.

6. I understand that I am to retain all copies of any of the materials that I receive that have been so designated as Confidential Information in a container, cabinet, drawer, room or other safe place in a manner consistent with the Protective Order and that all copies are to remain in my custody until I have completed my assigned or legal duties. I will destroy or return to counsel all confidential documents and things that come into my possession. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

7. I understand that the use of Confidential Information in any manner contrary to the provisions of the Protective Order may subject me to sanctions of the Court for contempt.

8. I hereby irrevocably submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the Protective Order and the obligations I am undertaking by executing this declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, in the State of \_\_\_\_\_.

\_\_\_\_\_  
Signature