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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

18 CONTINENTAL CASUALTY
19 COMPANY,

20 Plaintiff,

21 v.

22 ST. PAUL SURPLUS LINES
23 INSURANCE COMPANY and DOES 1 -
24 100, inclusive,

25 Defendants.

CASE NO.2:07-CV-01744-MCE-EFB

(Hon. Judge Morrison C. England, Jr.)

STIPULATED PROTECTIVE
ORDER

1 Plaintiff Continental Casualty Company ("Plaintiff"), Defendant St. Paul
2 Surplus Lines Insurance Company ("St. Paul"), and nonparty Crown Equipment
3 Corporation ("Crown"), by their respective counsel of record, agree and stipulate to
4 the following protective order pursuant to Fed. R. Civ. P. 26(c):

5 1. The above-referenced lawsuit may involve the discovery and exchange of
6 information deemed confidential and/or proprietary by Plaintiff, Defendants or
7 nonparty Crown; and the parties desire to expedite the flow of discovery materials,
8 facilitate the prompt resolution of disputes of confidentiality, and adequately protect
9 material entitled to be kept confidential. At this time, nonparty Crown is in the
10 process of producing documents it deems confidential and/or proprietary in
11 accordance with Crown's response to Plaintiff's July 5, 2011 Subpoena to Crown.

12 2. Nothing in this Stipulated Protective Order shall be construed as limiting
13 in any way the right of any party or person, including nonparty Crown, to object to
14 furnishing information sought by any other party. It is also understood that this
15 agreement is not intended to and, therefore, should not be construed as affecting the
16 right of any party or person, including nonparty Crown, to withhold information based
17 on a claim of privilege or attorney work product or other proper objection.

18 3. Any party and nonparty Crown may designate documents (as defined by
19 Fed. R. Civ. P. 34(a)) or any summaries or compilations derived there from, including
20 but not limited to productions of documents, answers to interrogatories, responses to
21 requests for admissions, deposition testimony, exhibits, and all other discovery,
22 regardless of format, that it deems confidential and/or proprietary by physically
23 stamping the word "CONFIDENTIAL" on such documents and/or by specifically
24 designating such documents as confidential in the letter or pleading transmitting or
25 producing such documents. The "CONFIDENTIAL" stamp shall be large enough and
26 conspicuously placed so as to allow ready and easy observation.

27 4. All documents that Crown designated as "Confidential" in Coupe v.
28 Crown Lift Trucks, et al., Yolo County Superior Court Case No. P002-1064, in

1 accordance with the Stipulation for Protective Order and Order entered in that case,
2 and any other information, including written discovery or responses thereto,
3 deposition transcripts and exhibits, pleadings, motions, affidavits, briefs, and expert
4 reports in that case that quote, summarize, or contain confidential Crown material
5 shall remain confidential and shall be deemed designated as "CONFIDENTIAL" for
6 purposes of this lawsuit in accordance with this Stipulated Protective Order and shall
7 be entitled to all protections afforded by this Stipulated Protective Order.

8 5. The documents produced pursuant to this Stipulated Protective Order
9 shall not be disclosed, disseminated, or in any manner shared with any person or
10 entity, other than as specifically provided for herein.

11 6. The documents produced pursuant to this Stipulated Protective Order
12 many only be disclosed to:

13 A. The attorneys of record actively involved in the litigation in this lawsuit,
14 and employees of such attorneys to the extent reasonably necessary to render
15 professional services in this litigation.

16 B. The Court, including court personnel, any court exercising appellate
17 jurisdiction over this lawsuit, and stenographers transcribing a deposition.

18 C. Experts or consultants retained by the parties for the purpose of assisting
19 counsel in this litigation, but only after such experts or consultants have
20 executed a declaration in the form attached hereto as Exhibit A, which
21 declaration shall be maintained by counsel for the party retaining the expert or
22 consultant.

23 D. The parties to this litigation, including representatives of such parties,
24 and then only to the extent deemed reasonably necessary by counsel for such
25 party, but only after such party representative has executed a declaration in the
26 form attached hereto as Exhibit A, which declaration shall be maintained by
27 counsel for that party.
28

1 7. Written discovery and responses thereto, deposition transcripts and
2 exhibits, pleadings, motions, affidavits, briefs, and expert reports that quote,
3 summarize or contain material entitled to protection, to the extent feasible, shall be
4 prepared in such a manner that the confidential information is bound separately from
5 that not entitled to protection.

6 8. Unless otherwise required by the Court, whenever any document
7 designated as "CONFIDENTIAL" or any pleading containing "CONFIDENTIAL"
8 information is filed with the Court, the party submitting such document or pleading
9 shall file a motion for leave to file under seal in accordance with E.D. Local Rule 141.

10 9. The inadvertent production or disclosure of any document (including but
11 not limited to e-mail or other electronic documents) or thing otherwise protected by
12 attorney-client privilege or work-product protection (as defined by Fed. R. Evid.
13 502(g)) ("Disclosed Protected Information") shall not constitute or be deemed a
14 waiver or forfeiture of any claim of privilege or work product protection that the
15 producing party would otherwise be entitled to assert with respect to the Disclosed
16 Protected Information or its subject matter. The producing party shall assert in writing
17 the attorney-client or work product protection with respect to the Disclosed Protected
18 Information. The receiving party shall, within five (5) business days of receipt of that
19 writing, return or destroy the Disclosed Protected Information and any and all copies
20 thereof or references thereto and provide a certification of counsel that all such
21 Disclosed Protected Information has been returned or destroyed.

22 A. If the receiving party disputes and wishes to contest any such Disclosed
23 Protected Information was inadvertently produced or is protected by the
24 attorney-client privilege or by work-product immunity, the receiving party shall
25 so notify the producing party in writing when the Disclosed Protected
26 Information (and all copies) are returned to the producing party.

27 B. Within fifteen (15) days after receiving such notification, the producing
28 party shall provide to the receiving parties a list identifying all such returned

1 Disclosed Protected Information and stating the basis for the claim of privilege
2 or immunity.

3 C. Within fourteen (14) days of receiving such a list, the receiving party or
4 parties may file a motion to compel production of such Disclosed Protected
5 Information, the protection of which is still disputed (a "Privilege Motion").
6 The Privilege Motion shall not assert as a ground for compelling production the
7 fact or circumstances of inadvertent production.

8 D. With respect to Disclosed Protected Information subsequently generated
9 by a receiving party, which derivative Disclosed Protected Information contains
10 information derived from such inadvertently produced Disclosed Protected
11 Information, if the receiving party does not obtain an order compelling
12 production pursuant to a timely filed Privilege Motion, the receiving party shall,
13 within five (5) business days after learning of the denial of the Privilege
14 Motion, either destroy the derivative Disclosed Protected Information or redact
15 from them all such derivative privileged or work-product information in a
16 manner such that the derivative privileged or work-product information cannot
17 in any way be retrieved, inferred or reproduced.

18 E. Nothing in this paragraph shall limit a party's ability to assert to the Court
19 that a disclosing party's affirmative use of Disclosed Protected Information in
20 this litigation in fairness requires disclosure of privileged or work product
21 protected information pursuant to Fed. R. Evid. 106 or 502(a).

22 10. Within thirty (30) days following the final determination of the subject
23 lawsuit, each party, party representative, and their attorneys and their agents, experts
24 and consultants shall destroy or return all copies of documents designated herein as
25 "CONFIDENTIAL" to the attorney for the party or nonparty (such as Crown) which
26 produced the documents.

27 11. The documents produced pursuant to this Stipulated Protective Order
28 shall be used solely for the purpose of preparing for and conducting this litigation.

1 The parties, their attorneys, agents, experts and consultants understand and agree that
2 the documents designated as confidential and/or proprietary shall not be used for any
3 other purpose and shall not be shared with persons or entities other than as provided
4 for herein.

5 12. The counsel of record for the parties are responsible for employing
6 reasonable measures to control, consistent with this Stipulated Protective Order, the
7 duplication of, access to, and distribution of the documents produced pursuant to this
8 Stipulated Protective Order.

9 13. If a person who has obtained a document under the terms of this
10 Stipulated Protective Order receives a subpoena or other similar request for such
11 document, that person shall promptly notify in writing the party or other person who
12 designated the document as confidential of the pendency of such subpoena or similar
13 request.

14 14. Unless the parties stipulate otherwise, evidence of the existence or
15 nonexistence of a designation under this Stipulated Protective Order shall not be
16 admissible for any purpose.

17 15. Notwithstanding the termination of the instant litigation, the court shall
18 retain jurisdiction over the parties and persons receiving information pursuant to the
19 terms of this Stipulated Protective Order for the purpose of enforcing all obligations
20 arising hereunder.

21 ORDER

22 GOOD CAUSE APPEARING, IT IS HEREBY ORDERED THAT the
23 Stipulated Protective Order is approved.

24 DATED: August 22, 2011.

25 
26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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