

**Snell & Wilmer**  
LLP  
LAW OFFICES  
600 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626-7689  
(714) 427-7000

1 Robert J. Gibson (#144974)  
Email: hgibson@swlaw.com  
2 Alina Amarkarian (#245470)  
Email: aamarkarian@swlaw.com  
3 SNELL & WILMER L.L.P.  
600 Anton Boulevard, Suite 1400  
4 Costa Mesa, CA 92626-7689  
Telephone: (714) 427-7000  
5 Facsimile: (714) 427-7799

6 Attorneys for Defendant  
FORD MOTOR COMPANY  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

11 DONALD HAYES ALBEE,  
12 Plaintiff,

13 v.

14 CONTINENTAL TIRE NORTH  
AMERICA, INC., An Ohio  
15 Corporation, and FORD MOTOR  
COMPANY, INC. a Delaware  
16 Corporation,

17 Defendants.  
18

CASE NO. 2:09-CV-01145-LKK-EFB  
Honorable Lawrence K. Karlton  
Courtroom No. 4

**STIPULATED PROTECTIVE  
ORDER; ORDER**

DATE OF FILING: January 12, 2009  
TRIAL DATE: January 11, 2011

19  
20 In order to preserve and maintain the confidentiality of certain confidential,  
21 commercially sensitive and proprietary documents to be produced by FORD  
22 MOTOR COMPANY ("Ford") in this action, it is ordered that:

23 1. Documents to be produced by Ford or Plaintiff in this litigation which  
24 contain confidential information shall hereafter be referred to as "Protected  
25 Documents." Any document or any information designated as "Subject to  
26 Protective Order," or other similar language in accordance with the provisions of  
27 this Order, shown or disclosed as provided in this Order.

28 ///

1           2.     As used in this Order, the term "documents" means all written  
2 material, videotapes and all other tangible items, produced in whatever format (e.g.,  
3 hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy,  
4 videotape, computer diskette, CD-ROM, DVD, hard drive or otherwise).

5           3.     The burden of proving that a Protected Document contains  
6 commercially sensitive, proprietary, and/or confidential information is on the party  
7 producing the document. Prior to designating any material as "Protected," the  
8 producing party must make a bona fide determination that the material is, in fact, a  
9 trade secret, confidential technical information or other commercially sensitive  
10 information, the dissemination of which would damage the party's competitive  
11 position. If a party disagrees with the "Protected" designation of any document, the  
12 party will so notify the producing party in writing. If the parties are unable to  
13 agree, within 30 days of receiving such notice, the producing party will then apply  
14 to this Court to set a hearing for the purpose of establishing that said document is  
15 protected. Any document so marked as "Protected" will continue to be treated as  
16 such pending determination by the Court as to its confidential status.

17           4.     The designation of Protected Documents may be made by marking or  
18 placing the notice "Subject to Protective Order" or substantially similar notice, on  
19 the document, or, where a copy of the original document is to be produced, on that  
20 copy in a location that does not cover or mark over any textual material if possible.

21           5.     Protected Documents and any copies thereof received pursuant to  
22 paragraph 6 below shall be maintained confidential by the receiving party, his/her  
23 attorney, other representatives, and expert witnesses, and shall be used only for  
24 preparation for the trial of this matter, subject to the qualifications set forth herein.

25           6.     Protected Documents shall be disclosed only to "Qualified Persons."  
26 Qualified Persons are limited to:

- 27           a.     Counsel of Record for the parties, and the parties;  
28           b.     Employees of Counsel of Record involved in the preparation

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

and trial of this action;

- c. Experts and non-attorney consultants retained by the parties for the preparation or trial of this case, provided that no disclosure shall be made to any expert or consultant who is employed by a competitor of Ford;
- d. The Court, the Court's staff, witnesses, and the jury in this case; and
- e. Attorneys representing Plaintiffs, and the experts and non-attorney consultants retained by such attorneys, in other cases either pending or being investigated against Ford involving a UN105 or UN150 Ford Explorer, or a P207 Ford Explorer Sport Trac involving the same allegations asserted in this case, provided that no disclosure shall be made to any expert or consultant who is employed by a competitor of Ford.

7. Plaintiffs' Counsel must make reasonable efforts to insure the individuals described in paragraphs 6(b), 6(c) and 6(e) above are "Qualified Persons" and must provide to Ford advance notice of the names of such "Qualified Persons" with whom the Protected Documents will be shared.

8. Before receiving access to any Protected Document or the information contained therein, each person described in paragraphs 6(b), 6(c) and 6(e) above shall execute a "Written Assurance" in the form contained in Exhibit A, attached hereto. Counsel for Plaintiff/Plaintiffs shall retain each such executed "Written Assurance" and shall keep a list identifying (a) all persons all persons described in paragraphs 6(b), 6(c) and 6(e) above to whom Protected Documents have been disclosed, and (b) all Protected Documents disclosed to such persons. Each such executed written assurance and list shall be submitted to counsel for Ford within thirty (30) days of the disclosure of Protected Documents under this Order and at the termination of this litigation.

1           9.       As the Protected Documents may only be distributed to "Qualified  
2 Persons," Plaintiff's Counsel, Defendants' Counsel, and all persons described in  
3 paragraph 6 above, may not post Protected Documents on any website or internet  
4 accessible document repository.

5           10.      To the extent that Protected Documents or information obtained  
6 therefrom are used in the taking of depositions and/or used as exhibits at trial, or to  
7 the extent that deposition testimony is otherwise marked "confidential", such  
8 documents, information and/or testimony shall remain subject to the provisions of  
9 this Order, along with the transcript pages of the deposition testimony and/or trial  
10 testimony dealing with the Protected Documents, information and/or testimony.  
11 The use of Protected Documents or information at trial, and the protection of any  
12 trial testimony, shall be subject to any applicable Local Rules, the Final Pretrial  
13 Conference Order, and further rulings or orders of this Court.

14           11.      All documents that are filed with the Court that contain any portion of  
15 any Protected Document or information taken from any Protected Document shall  
16 be filed with the Court under seal pursuant only to court order and in accordance  
17 with the procedures set forth in Eastern District of California Local Rules 140 and  
18 141.

19           12.      Any court reporter or transcriber who reports or transcribes any pre-  
20 trial testimony in this action shall agree that all "confidential" information  
21 designated as such under this Order shall remain "confidential" and shall not be  
22 disclosed by them, except pursuant to the terms of this Order, and that any notes or  
23 transcriptions of such testimony (and any accompanying exhibits) will be retained  
24 by the reporter or delivered to counsel of record.

25           13.      Inadvertent or unintentional production of documents or information  
26 containing information which should have been designated as "confidential" shall  
27 not be deemed a waiver in whole or in part of the party's claims of confidentiality.

28           14.      This Protective Order may not be waived, modified, abandoned or

1 terminated, in whole or part, except by an instrument in writing signed by the  
2 parties. If any provision of this Protective Order shall be held invalid for any  
3 reason whatsoever, the remaining provisions shall not be affected thereby.

4 15. After termination of this litigation, the provisions of this Order shall  
5 continue to be binding. This Court retains and shall have jurisdiction over the  
6 parties and recipients of the Protected Documents for enforcement of the provisions  
7 of this Order following termination of this litigation.

8 16. This Protective Order shall be binding upon the parties hereto, upon  
9 their attorneys, and upon the parties' and their attorneys' successors, executors,  
10 personal representatives, administrators, heirs, legal representatives, assigns,  
11 subsidiaries, divisions, employees, agents, independent contractors, or other  
12 persons or organizations over which they have control.

13 17. All persons described in paragraph 6 above shall not under any  
14 circumstance sell, offer for sale, advertise, or publicize either the Protected  
15 Documents and the Confidential information contained therein or the fact that such  
16 persons have obtained Ford's Protected Documents and Confidential information.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

18. To the extent Ford is requested to produce documents it feels should not be subject to the sharing provisions of this protective order, Ford does not waive its right to subsequently request that the parties enter into a non-sharing protective order prior to the production of any such documents nor do Plaintiffs waive their rights to petition the Court for a sharing protective order.

Dated: January \_\_, 2010 SNELL & WILMER L.L.P.

By: signature on original  
Robert J. Gibson, Esq.  
Alina Amarkarian, Esq.  
Attorneys for Defendant  
FORD MOTOR COMPANY

Dated: January \_\_, 2010 PEREZ, WILLIAMS & MEDINA

By: signature on original  
Robert Gray Williams, Esq.  
Attorney for Plaintiff  
DONALD HAYES ALBEE

Dated: January 14, 2010 W. RANDOLPH BARNHART, PC

By: signature on original  
W. Randolph Barnhart, Esq.  
Attorneys for Plaintiff  
DONALD HAYES ALBEE

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

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DONALD HAYES ALBEE,  
  
Plaintiff,  
  
v.  
  
CONTINENTAL TIRE NORTH  
AMERICA, INC., An Ohio  
Corporation, and FORD MOTOR  
COMPANY, INC. a Delaware  
Corporation,  
  
Defendants.

CASE NO. 2:09-CV-01145-LKK-EFB  
  
Honorable Lawrence K. Karlton  
Courtroom No. 4

**WRITTEN ASSURANCE ON  
STIPULATED SHARING  
PROTECTIVE ORDER FOR  
DOCUMENTS PRODUCED BY  
FORD MOTOR COMPANY**

DATE OF FILING: January 12, 2009  
TRIAL DATE: January 11, 2011

**AFFIDAVIT OF** \_\_\_\_\_ being duly sworn and  
personally appearing before the undersigned attesting officer, duly authorized by  
law to administer oaths, deposes and says that the within statements are true and  
correct:

1.

I have read the Stipulated Protective Order attached hereto and I understand  
its terms and meanings.

2.

I agree that my signature below submits me to the jurisdiction of the United

1 States District Court, Eastern District of California in which the action of *Donald*  
2 *Hayes Albee v. Continental Tire North America, Inc., et al.*, Case No. 2:09-CV-  
3 01145-LKK-EFB, is pending, and binds me to the provisions of the Stipulated  
4 Protective Order, including to all promises undertaken in the Order, as if originally  
5 agreed by me.

6 Further Affiant sayeth not.

7 This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
AFFIANT

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



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

**ORDER**

The foregoing stipulated protective order is approved as modified. Ford Motor Company's Motion for a Protective Order, Dckt. No. 45, is deemed withdrawn and the February 3, 2010 hearing on that motion is vacated.

SO ORDERED.

Dated: January 29, 2010



---

Hon. Edmund F. Brennan  
United States Magistrate Judge