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Attorneys for Defendant
Dana Companies, LLC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

STONINGTON INSURANCE COMPANY,
Plaintiff,
v.
DANA COMPANIES LLC; and
DOES 1 through 50, inclusive,
Defendants.

CASE NO. 2:10-CV-01372 KJM-EFB

STIPULATION IN SUPPORT OF THE
APPLICATION FOR AN ORDER
SHORTENING TIME ON DEFENDANT'S
MOTION TO COMPEL

STIPULATION AND ORDER

WHEREAS on March 24, 2009, Plaintiff Stonington Insurance Company (“Plaintiff”) filed a subrogation action in the Superior Court of California, County of Colusa, under case number CV23748, entitled *Stonington Insurance Company v. Dana Companies LLC*, for damages resulting from an accident involving a tanker truck owned by it insured, Rinehart Oil, Inc. Under 28 U.S.C. § 1446(b), based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a)(1), 1441(b), and 1446, Defendant removed the action to this Court.

WHEREAS the discovery cut off in the above entitled matter is currently scheduled for April 1, 2011.

WHEREAS the parties engaged in informal discovery and negotiation in hopes of reaching settlement in this action prior to attending mediation on December 9, 2010. Unfortunately, the parties were not able to resolve the action at the December mediation.

WHEREAS on February 28, 2011 Defendant served a deposition subpoena for the production of documents on Plaintiff's insured, Rinehart Oil, Inc., with a production date of March 11, 2011.

WHEREAS on February 28, 2011, Defendant served deposition subpoenas with document requests on Plaintiff's insured Rinehart Oil's Person Most Knowledgeable ("PMK"), as well as two of the insured's employees, Dennis Moody and Jack Thomas to take place on March 14 and 15, 2011, respectively.

WHEREAS Defendant believes the documents responsive to the deposition subpoena served on Rinehart Oil and its employees, which were not previously produced with Plaintiff's initial disclosures, are necessary for the effective and thorough deposition of Rinehart Oil's PMK and its two employees, Mr. Thomas and Mr. Moody, and are relevant to Defendant's defense of this action.

WHEREAS counsel for Plaintiff appearing for its insured, Rinehart Oil, objected to the production of documents counsel for Plaintiff alleges are privileged or otherwise protected

1 documents or documents that would violate the right of privacy of any third parties. Plaintiff
2 also asserts that many of the requests are onerous, overburdensome and oppressive that the cost
3 involved would be extraordinarily taxing on Rinehart Oil. According to Plaintiff, Rinehart Oil
4 has already produced all documents within its possession, custody, and control responsive to
5 the balance of the requests, and/or the requested documents, although may have existed at some
6 point, had been destroyed pursuant to regulations.

7 WHEREAS on or about March 4, 2011, Defendant served a separate notice of
8 deposition of Plaintiff Stonington Insurance Company's PMK to take place on March 23, 2011
9 in Sacramento, California.

10 WHEREAS Plaintiff objects to producing its PMK in California for the March 23,
11 2011, deposition as no witness was available on that date and time, and asserts that the
12 deposition should take place in Arkansas at its primary place of business given the number of
13 potential PMK witnesses to be produced.

14 WHEREAS, at the request of Plaintiff's counsel appearing for Rinehart Oil, on March
15 14, 2011 Defendant re-noticed the depositions of Mr. Moody, Mr. Thomas, and Rinehart Oil's
16 PMK for March 21, 22, and 23, 2011.

17 WHEREAS on March 15, 2011, Defendant served deposition subpoenas and noticed
18 the depositions of the insured's other employees, whom were drivers of the Subject Vehicle
19 that was involved in the accident that is the subject of this subrogation action, J.R. McCutchin,
20 Fred Martinez, Bruce Johnson, Joe Marin, Johnny Marin, Pat Withrow, Ray Vanderpool, and
21 Tom Applebee. The subpoenas are for March 29, 2011 through March 31, 2011.

22 WHEREAS the parties are attempting to resolve through the meet and confer process
23 the above discovery disputes regarding the production of documents responsive to the
24 document requests attached to the deposition subpoenas for Mr. Moody, Mr. Thomas, and
25 Rinehart Oil, Inc., which counsel for Defendant believes are necessary for the defense of this
26 action and for the effective deposition of each, as well as the production of Plaintiff's PMK for
27 deposition in Sacramento, California.

28

1 WHEREAS the parties submitted a stipulation to the Court on or about March 21, 2011
2 to extend the discovery cut-off to complete the non-expert discovery to May 6, 2011, for the
3 limited purpose of completing the depositions listed above, which were noticed and
4 subpoenaed prior to the original discovery cut-off, as well as to provide additional time to
5 resolve the discovery dispute regarding the production of documents from Plaintiff's insured
6 Rinehart and its employees in response to the subpoenas served by Defendant.

7 WHEREAS good cause exists for, and none of the parties to this matter shall be
8 prejudiced by, shortening the time to notice a Motion to Compel (1) the production of the
9 documents responsive to the deposition subpoenas described above and (2) the appearance of
10 Plaintiff's PMK for deposition in Sacramento, California.

11 WHEREAS the Parties stipulate and agree to waive full notice for a hearing on the
12 Motion to Compel described above to take place on Wednesday, March 30, 2011.

13 WHEREAS Defendant stipulates and agrees to provide Plaintiff with its portions of the
14 Joint Statement regarding the discovery dispute no later than March 22, 2011.

15 WHEREAS Plaintiff stipulates and agrees to provide Defendant with its portions of the
16 Joint Statement regarding the discovery dispute no later than March 29, 2011.

17 WHEREAS the parties stipulate and agree to file with the court their Joint Statement in
18 support of the discovery dispute on March 30, 2011 by 12:00 p.m.

19 WHEREAS, the parties agree to reset the depositions Mr. Moody, Mr. Thomas, and
20 Rinehart Oil's PMK, Stonington's PMK, and up to six of the other drivers for a date after the
21 parties have reached a resolution, or the court issues its order on the document production
22 disputes and PMK dispute, but prior to the May 6, 2011 cut-off.

23 THE PARTIES, THROUGH THEIR RESPECTIVE ATTORNEYS OF RECORD,
24 HEREBY STIPULATE to the application for an order shortening time on the hearing for the
25 motion to compel and request that the Court grant the application for the order shortening time.
26 Additionally, the parties stipulate the following schedule for the motion to compel:

27 The hearing on the Motion to Compel described above will place on Wednesday, April
28 1, 2011 at 10:00 a.m.

Defendant will provide Plaintiff with Defendant's portions of the Joint Statement regarding the discovery dispute no later than March 22, 2011.

Plaintiff will provide Defendant with Plaintiff's portions of the Joint Statement regarding the discovery dispute no later than March 29, 2011.

The parties will file with the court their Joint Statement in support of the discovery dispute on March 30, 2011.

Dated: March 21, 2011

CHOLAKIAN & ASSOCIATES

By: /s/ Jennifer Kung
Jennifer Kung
Kevin Cholakian
Attorneys for Plaintiff
Stonington Insurance Company

Dated: March 21, 2011

GREENBERG TRAURIG, LLP

By: /s/ Angela L. Diesch
Kevin T. Collins
M. Theresa Tolentino Meehan
Angela L. Diesch
Attorneys for Defendant
Dana Companies, LLC

ORDER

In light of the parties' March 21, 2011 stipulation in support of the application for an order shortening time on defendant's motion to compel, Dckt. No. 28, as well as the March 21, 2011 stipulation seeking to continue the discovery completion deadline from April 1, 2011 to May 6, 2011, Dckt. No. 28, **IT IS HEREBY ORDERED** that:

1. The stipulation for shortening time on defendant's motion to compel, Dckt. No. 29, is approved in part.

1 2. Defendant's motion to compel is *tentatively* set for hearing on Friday, April 1, 2011,
2 at 10:00 a.m. in Courtroom No. 24.¹

3 3. The parties are directed to meet and confer *in good faith* in an attempt to resolve
4 and/or narrow the disputes between them. If the parties are unable to resolve their disputes,
5 Defendant shall file a joint statement regarding the discovery disagreement no later than 12:00
6 p.m. (noon) on Wednesday, March 30, 2011.² Each party's portion of the joint statement shall
7 be no longer than 15 pages, for a total of 30 pages.³

8 4. If, upon review of the joint statement, it appears that the parties have not adequately
9 met and conferred, the April 1, 2011 hearing may be continued or vacated and/or sanctions may
10 be imposed. *See* Local Rule 251(d).

11 SO ORDERED.

12 Dated: March 21, 2011



13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE

19 1 Although the parties stipulate to the hearing being held on *Wednesday*, April 1, 2011, the
20 actual hearing date will be *Friday*, April 1, 2011. It is assumed that the parties intended for the
21 hearing to be held on that date since they stipulated to filing their joint statement on
22 Wednesday, March 30, 2011. Additionally, this tentative hearing date is contingent upon the
23 district judge approving the parties' stipulation to amend the scheduling order. If that
24 stipulation has not been approved by Wednesday, March 30, 2011, the April 1 hearing will be
25 vacated.

26 2 As provided in the stipulation, defendant shall provide its portion of the joint statement to
27 plaintiff on or before March 22, 2011, and plaintiff shall provide its portion of the joint
28 statement to defendant on or before March 29, 2011.

29 3 In addition to filing the joint statement electronically in .pdf format, defendant shall also
30 submit the joint statement by email in Word or Word Perfect format to
31 efborders@caed.uscourts.gov by March 30, 2011 at 12:00 p.m. (noon). The email subject line
32 must contain the words "Joint Statement," as well as the case number.