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National Insurance Company

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

CLARENDON NATIONAL
INSURANCE COMPANY,

Plaintiff,

vs.

CARDINAL LOGISTICS
MANAGEMENT CORPORATION
aka CARDINAL FREIGHT FLEET
AND PROTECTIVE INSURANCE
COMPANY, and DOES 1 through 25,
inclusive,

Defendants.

No. 2:15-cv-01309-KJM-DB

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER AND
PROTECTIVE ORDER PURSUANT
TO RULE 26(c) OF THE FEDERAL
RULES OF CIVIL PROCEDURE**

CARDINAL LOGISTICS
MANAGEMENT CORPORATION
aka CARDINAL FREIGHT FLEET
AND PROTECTIVE INSURANCE
COMPANY,

Cross-Complainants,

vs.

CLARENDON NATIONAL
INSURANCE COMPANY,

Cross-Defendant.

1 Plaintiff CLARENDON NATIONAL INSURANCE COMPANY
2 ("PLAINTIFF"), and defendant CARDINAL LOGISTICS MANAGEMENT
3 CORPORATION aka CARDINAL FREIGHT FLEET, AND PROTECTIVE
4 INSURANCE COMPANY ("DEFENDANTS") by and through their respective
5 counsel, hereby stipulate and agree that, in order to facilitate the discovery and trial
6 process, documents that the parties deem to be confidential, proprietary, or subject
7 to the privacy rights of third parties ("CONFIDENTIAL INFORMATION") shall be
8 produced and protected according to the following terms and conditions:
9

10 1. PURPOSES AND LIMITATIONS

11 Discovery in this action is likely to involve the disclosure and production of
12 confidential, proprietary, or private information for which special protection from
13 public dissemination and from use for any purpose other than prosecuting,
14 defending, or attempting to settle this litigation is warranted. This Order does not
15 confer blanket protections on all discovery responses, document productions or
16 deposition testimony. This Protective Order does not entitle the parties to file
17 confidential information under seal. Rules 5.2(a), (d-h), of the Federal Rules of
18 Civil Procedure set forth the procedures that must be followed and the standards that
19 will be applied when a party seeks permission from the court to file material under
20 seal.
21

22 2. DEFINITIONS

23 2.1 "Challenging Party" means a Party or Non-Party that challenges
24 the designation of information or items under this Order.

25 2.2 "Designating Party" means a Party or Non-Party that designates
26 information or items that it produces in disclosures or in responses to discovery as
27 "CONFIDENTIAL."

28 2.3 "Producing Party" means a Party or Non-Party that produces

1 Disclosure or Discovery Material in this action.

2 2.4 "Professional Vendor" means person or entity that provides
3 litigation support services (e.g., transcribing, photocopying, videotaping, translating,
4 preparing exhibits or demonstrations, and organizing, storing, or retrieving data in
5 any form or medium) and their employees and subcontractors.

6 2.5 "Confidential Material" means any Disclosure or Discovery
7 Material that is designated as "CONFIDENTIAL" pursuant to the terms of this
8 Protective Order.

9 2.6 "Receiving Party" means a Party that receives Disclosure or
10 Discovery Material from a Producing Party.

11

12 3. SCOPE

13 The protections conferred by this Order cover "Confidential Material" and (1)
14 any information copied or extracted from "Confidential Material"; (2) all copies,
15 excerpts, summaries, or compilations of "Confidential Material"; and (3) any
16 testimony, conversations, or presentations by Parties or their Counsel that might
17 reveal "Confidential Material." However, the protections conferred by this Order do
18 not cover (a) information that is in the public domain at the time of disclosure to a
19 Receiving Party or that becomes part of the public domain after its disclosure to a
20 Receiving Party as a result of a publication not involving a violation of this Order,
21 including becoming part of the public record through trial or otherwise; (b) any
22 information known to the Receiving Party prior to the disclosure or obtained by the
23 Receiving Party after the disclosure from a source who obtained the information
24 lawfully and under no obligation of confidentiality to the Designating Party, or (c)
25 the use of "Confidential Material" during the actual trial of this action. Any use of
26 "Confidential Material" during trial must be governed by a separate order.

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1 4. DURATION

2 The confidentiality obligations set forth in this Order shall survive and remain
3 in effect after the final disposition of this action unless the Designating Party agrees
4 otherwise in writing or a subsequent Order of Court directs otherwise.

5
6 5. DESIGNATING "CONFIDENTIAL MATERIAL"

7 5.1 Exercise of Restraint and Care in Designating Material for
8 Protection. Each Party or Non-Party that designates information or items for
9 protection under this Order must take care to limit any such designation to specific
10 material that the Designating Party or Non- Party in good faith believes to qualify as
11 "Confidential" under applicable law. To the extent it is practical to do so, the
12 Designating Party must designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify - so that other
14 portions of the material, documents, items, or communications for which protection
15 is not warranted are not swept unjustifiably within the ambit of this Order. Mass,
16 indiscriminate, or routine designations are prohibited. Designations that are shown
17 to be clearly unjustified or that have been made for an improper purpose (e.g., to
18 unnecessarily encumber or retard the case development process or to impose
19 unnecessary expenses and burdens on other parties) may expose the Designating
20 Party to sanctions.

21 5.2 Manner and Timing of Designations. Except as otherwise
22 provided in this Order, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced. A designation of "Confidentiality" in conformity with this Order
25 requires:

26 a. For information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or of other pretrial or trial
28 proceedings), the Producing Party must affix the legend "CONFIDENTIAL" to each

1 page that contains "Confidential Material." If only a portion or portions of the
2 material on a page qualifies for protection, the Producing Party also must clearly
3 identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins).

5 A Party or Non-Party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party has
7 indicated which material it would like copied and produced. During the inspection
8 and before the designation, all of the material made available for inspection shall be
9 deemed "Confidential." After the inspecting Party has identified the documents it
10 wants copied and produced, the Producing Party must determine which documents,
11 or portions thereof, qualify for protection under this Order. Then, before producing
12 copies of the specified documents, the Producing Party must affix the
13 "CONFIDENTIAL" legend to each page that contains "Confidential Material." If
14 only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

17 b. For deposition testimony, the Designating Party must identify on the
18 record, before the close of the deposition that the testimony included "Confidential"
19 material. The Designating Party may have thirty (30) days after delivery of the
20 transcript by the court reporter to designate the specific portions of the deposition
21 transcript which qualify as "Confidential." Only those portions of the transcript so"
22 designated shall be covered by the provisions of this Stipulated Protective Order.
23 Transcripts containing "Confidential Material" shall have an obvious legend on the
24 title page that the transcript contains "Confidential Material."

25 c. For intangible information and for tangible items which cannot be
26 marked as described in 5.2(a) or 5.2(b), the Producing Party must affix in a
27 prominent place on the exterior of the container or containers in which the
28 information or item is stored the legend "CONFIDENTIAL." If only a portion or

1 portions of the information or item warrant protection, the Producing Party, to the
2 extent practicable, shall identify the protected portion(s) and specify the level of
3 protection being asserted.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an
5 inadvertent failure to designate qualified information or items does not, standing
6 alone, waive the Designating Party's right to secure protection under this Order for
7 such material. Upon timely correction of a designation, the Receiving Party must
8 make reasonable efforts to assure that the material is treated in accordance with the
9 provisions of this Order.

10
11 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

12 6.1 Timing of Challenges. Prior to the filing of any motion with the
13 Court, any Party challenging a designation of confidentiality shall conduct a
14 meaningful, good faith meet and confer with the Designating Party. If the meet and
15 confer does not result in a resolution, the Challenging Party may file an appropriate
16 motion with the Court to challenge a designation of confidentiality. Unless a
17 prompt challenge to a Designating Party's confidentiality designation is necessary to
18 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
19 significant disruption or delay of the litigation, a Party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge
21 promptly after the original designation is disclosed.

22 6.2 Judicial Intervention. If a Party files a motion to challenge
23 another's "Confidentiality" designation, all other parties shall continue to treat the
24 material in question as "Confidential" until the court rules on the challenge.

25
26 7. ACCESS TO AND USE OF "CONFIDENTIAL MATERIAL"

27 7.1 Basic Principles. A Receiving Party may use "Confidential
28 Material" disclosed or produced by another Party or by a Non-Party in connection

1 with this case only for prosecuting, defending, or attempting to settle this litigation.
2 Such "Confidential Material" may be disclosed only to the categories of persons and
3 only under the conditions described in this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated "Confidential"
7 only to:

- 8 a. the Receiving Party's Counsel;
- 9 b. the officers, directors, and employees of the Receiving Party to
10 whom disclosure is reasonably necessary for this litigation;
- 11 c. Experts of the Receiving Party to whom disclosure is reasonably
12 necessary for this litigation and who have signed the "Acknowledgment and
13 Agreement to Be Bound" in substantially the same form as shown in the Appendix
14 to this Order;
- 15 d. the court and its personnel;
- 16 e. court reporters and their staff;
- 17 f. professional jury or trial consultants, Professional Vendors to
18 whom disclosure is reasonably necessary for this litigation and who have signed the
19 "Acknowledgment and Agreement to Be Bound" in substantially the same form as
20 shown in the Appendix to this Order;
- 21 g. during their depositions, witnesses in the action to whom
22 disclosure is reasonably necessary and who have signed the "Acknowledgment and
23 Agreement to Be Bound" in substantially the same form as shown in the Appendix
24 to this Order unless otherwise agreed by the Designating Party or provided by a
25 subsequent Order of Court; and
- 26 h. the author or recipient of a document containing the information
27 or a custodian or other person who otherwise possessed or knew the information.

1 8. SUBPOENAS OF "CONFIDENTIAL MATERIAL"

2 If a Receiving Party is served with a subpoena or a court order issued in
3 another action or proceeding that compels disclosure of any information or items
4 designated in this action as "Confidential" by another Designating Party, the
5 Receiving Party must:

6 a. promptly notify in writing the Designating Party. Such
7 notification shall include a copy of the subpoena or court order;

8 b. promptly notify in writing the party who caused the subpoena or
9 order to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall include
11 a copy of this Stipulated Protective Order; and

12 c. cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose "Confidential Material" may be affected.
14 Nothing in this Paragraph shall require a Receiving Party who is served with a
15 subpoena or court order for the production of another party's "Confidential Material"
16 to take affirmative action at its own expense beyond the notification and cooperation
17 provisions described above. The Designating Party whose "Confidential
18 Information" is sought shall bear the burden and expense of seeking protection of
19 that "Confidential Material."
20

21 9. "CONFIDENTIAL MATERIAL" PRODUCED BY NON-PARTIES

22 This Order applies to "Confidential" information produced by a Non-Party to
23 this action provided he/she/it designates the material "Confidential" in the manner
24 specified by this Order.
25

26 10. UNAUTHORIZED DISCLOSURE OF "CONFIDENTIAL
27 MATERIAL"

28 If, through inadvertence or excusable mistake, a Receiving Party learns that it

1 has disclosed "Confidential Material" to any person or in any circumstance not
2 authorized under this Protective Order, the Receiving Party must take reasonable
3 steps to notify in writing the Designating Party of the unauthorized disclosures, use
4 its best efforts to retrieve all unauthorized copies of the "Confidential Material,"
5 inform the person or persons to whom unauthorized disclosures were made of all the
6 terms of this Order, and request such person or persons to execute the
7 "Acknowledgment and Agreement to Be Bound" in substantially the same form as
8 shown in the Appendix to this Order.

9
10 11. MISCELLANEOUS

11 11.1 Right to Further Relief. Nothing in this Order abridges the right
12 of any person to seek its modification by the court in the future.

13 11.2 Right to Assert Other Objections. By stipulating to the entry of
14 this Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to the use in evidence of any of the material covered by this Protective
18 Order.

19 11.3 Filing "Confidential Material." Without either written
20 permission from the Designating Party or a court order, a Party may not file in the
21 public record in this action any "Confidential Material." A Party that seeks to file
22 under seal any "Confidential Material" must comply with Rules 5.2(a), (d-h) of the
23 Federal Rules of Civil Procedure. If a Receiving Party's request to file "Confidential
24 Material" under seal is denied by the court, then the Receiving Party may file the
25 "Confidential Material" in the public record unless otherwise instructed by the court.

26
27 12. FINAL DISPOSITION

28 Within a reasonable period after the final disposition of this action, each

1 Receiving Party must return all "Confidential Material" to the Producing Party or it
2 must destroy such material. Notwithstanding this provision, each Receiving Party
3 may retain – as confidential – any electronic copies of “confidential material”
4 subject to this Protective Order. Further, counsel are entitled to retain an archival
5 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
6 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
7 work product, and consultant and expert work product, even if such materials
8 contain "Confidential Material." Any such archival copies that contain or constitute
9 "Confidential Material" will remain subject to this Protective Order.

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DATED: March 7, 2017 MUSICK, PEELER & GARRETT LLP

By: /S/ Susan J. Field
Susan J. Field
Plaintiff/Counter-Defendant
CLARENDON NATIONAL
INSURANCE COMPANY

DATED: March 7, 2017 LEACH & MCGREEVY, LLP

By: /S/ Richard E. McGreevy
Richard E. McGreevy
Brian Leach
Attorneys for Defendant and Counter-
Claimants
CARDINAL LOGISTICS
MANAGEMENT CORPORATION, aka
CARDINAL FREIGHT FLEET AND
PROTECTIVE INSURANCE COMPANY

1 APPENDIX TO PROTECTIVE ORDER

2 Case Name: Clarendon National Insurance Company v. Cardinal Logistics
3 Management, et al. United States District Court Eastern District of California Case
4 No. 2:15-CV-01309-KJM-DB

5 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY
6 PROTECTIVE ORDER

7 I, _____ [print or type full name], of
8 _____, [print or type full address], declare under
9 penalty of perjury under the Federal laws of the United States of America that I
10 have read in its entirety and understand the Protective Order that was issued in the
11 above referenced lawsuit by the United States District Court Eastern District of
12 California. I agree to comply with and to be bound by all the terms of this
13 Protective Order as it applies to information designated as "Confidential Material"
14 during discovery in the above referenced lawsuit. I will not disclose in any manner
15 information that is designated "Confidential" except in compliance with the
16 provisions of the Protective Order. I acknowledge that the unauthorized
17 dissemination of "Confidential Material" to third parties may expose me to
18 sanctions by the Court. I further agree to submit to the jurisdiction of the United
19 States District Court Eastern District of California for the purpose of enforcing the
20 terms of this Protective Order, even if such enforcement proceedings occur after
21 termination of this action.

22
23
24 DATED: _____, 2017 _____
25 ///

1 **ORDER**

2 Pursuant to the parties' March 7, 2017 stipulation, (ECF No. 41), IT IS SO ORDERED.

3 IT IS FURTHER ORDERED THAT:

4 1. Requests to seal documents shall be made by motion before the same judge who will
5 decide the matter related to that request to seal.

6 2. The designation of documents (including transcripts of testimony) as confidential
7 pursuant to this order does not automatically entitle the parties to file such a document with the
8 court under seal. Parties are advised that any request to seal documents in this district is
9 governed by Local Rule 141. In brief, Local Rule 141 provides that documents may only be
10 sealed by a written order of the court after a specific request to seal has been made. L.R. 141(a).
11 However, a mere request to seal is not enough under the local rules. In particular, Local Rule
12 141(b) requires that "[t]he 'Request to Seal Documents' shall set forth *the statutory or other*
13 *authority for sealing*, the requested duration, the identity, by name or category, of persons to be
14 permitted access to the document, and all relevant information." L.R. 141(b) (emphasis added).

15 3. A request to seal material must normally meet the high threshold of showing that
16 "compelling reasons" support secrecy; however, where the material is, at most, "tangentially
17 related" to the merits of a case, the request to seal may be granted on a showing of "good cause."
18 Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-1102 (9th Cir. 2016);
19 Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178-80 (9th Cir. 2006).

20 4. Nothing in this order shall limit the testimony of parties or non-parties, or the use of
21 certain documents, at any court hearing or trial – such determinations will only be made by the
22 court at the hearing or trial, or upon an appropriate motion.

23 5. With respect to motions regarding any disputes concerning this protective order which
24 the parties cannot informally resolve, the parties shall follow the procedures outlined in Local
25 Rule 251. Absent a showing of good cause, the court will not hear discovery disputes on an *ex*
26 *parte* basis or on shortened time.

27 ///

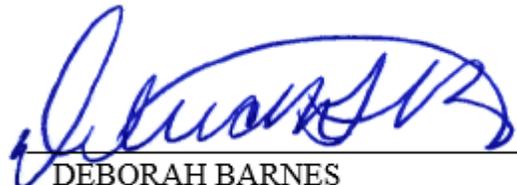
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1 6. The parties may not modify the terms of this Protective Order without the court's
2 approval. If the parties agree to a potential modification, they shall submit a stipulation and
3 proposed order for the court's consideration.

4 7. Pursuant to Local Rule 141.1(f), the court will not retain jurisdiction over enforcement
5 of the terms of this Protective Order after the action is terminated.

6 8. Any provision in the parties' stipulation that is in conflict with anything in this order is
7 hereby DISAPPROVED.

8 Dated: March 8, 2017

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11 
12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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