

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-CV-2652-LTB-BNB

OKLAND CONSTRUCTION COMPANY, INC.,

Plaintiff,

v.

THE PHOENIX INSURANCE COMPANY,
THE TRAVELERS INDEMNITY COMPANY OF AMERICA
ST. PAUL FIRE AND MARINE INSURANCE COMPANY,
ST. PAUL SURPLUS LINES INSURANCE COMPANY,
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA,
EVEREST NATIONAL INSURANCE COMPANY, and
AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY,

Defendants.

**ORDER TO RESTRICT ACCESS (LEVEL 1) TO EXHIBITS TO MOTIONS FOR
SUMMARY JUDGMENT PURSUANT TO PROTECTIVE ORDER**

The Parties, by and through their respective counsel, stipulate and agree to the entry of an order restricting access to documents identified herein pursuant to the Protective Order (ECF Nos. 76 and 92).

IT IS ORDERED:

1. The following documents filed as exhibits by Defendant Everest National Insurance Company (“Everest”)¹ shall be protected pursuant to the Protective Order as Level 1 Restricted:

¹ On April 30, 2013, Everest filed its Motion for Summary Judgment on Okland Construction Company’s Claims for Bad Faith Breach of Insurance Contract and Statutory Violations and Travelers’ Negligence Claim Against Everest. (ECF No. 160). In support of this Motion, Everest included the Declaration of Christopher Carucci with several supporting exhibits. In addition, on April 30, 2013, subject to the Protective Order, Everest filed its Motion for Summary Judgment on Coverage Related Claims. (ECF No. 164).

ECF Filing and Page No.	Description
ECF No. 160-5, pp. 13-16	September 20, 2011 Email Correspondence Between Ivan Sarkissian, Esq. and Nicolo D'Agostini, and Nicolo D'Agostino and David Zimmerman, Esq., regarding Settlement Meeting with Plaintiff Rivergate's Counsel
ECF No. 160-8	July 12, 2011 Status Report and Updated Evaluation from Ivan Sarkissian, Esq.
ECF No. 160-10	September 20, 2011 Email Correspondence Between Nicolo D'Agostini and David Zimmerman, Esq., regarding Settlement Meeting with Plaintiff Rivergate's Counsel
ECF No. 165-8	September 15, 2011 Email Correspondence Between David Zimmerman, Esq., and Nicolo D'Agostino

2. The following documents filed by Defendant Travelers Indemnify Company of America ("Travelers") shall be protected pursuant to the Protective Order as Level 1 Restricted:²

ECF Filing and Page No.	Description
ECF No. 158-7	March 10, 2011 Rivergate Mediation Email Correspondence from Ivan Sarkissian, Esq. to Okland and David Zimmerman, Esq.
ECF No. 158-8	July 12, 2011 Defense Status Report and Updated Evaluation Correspondence from Ivan Sarkissian, Esq.
ECF No. 158-9	September 3, 2011 Mediation Summary Email Correspondence from Ivan Sarkissian, Esq.
ECF No. 158-10	September 13, 2011 Email Correspondence Distributing Ivan Sarkissian, Esq.'s Update Status Email dated September 2, 2011
ECF No. 158-11	September 14, 2011 Updated Defense Status Report and Evaluation Correspondence from Ivan Sarkissian, Esq.
ECF No. 158-12	September 22, 2011 Email from Nicolo D'Agostino to Ivan Sarkissian, Esq., regarding Liability Exposure
ECF No. 158-13	September 30, 2011 Email from Nicolo D'Agostino to Ivan Sarkissian, Esq., regarding Damages
ECF No. 191-2	September 24, 2011 Email Correspondence Regarding Settlement Demand from Ivan Sarkissian, Esq. to David Zimmerman, Esq.
ECF No. 191-3	September 30, 2011 Email Correspondence Regarding Settlement from Ivan Sarkissian, Esq. to David Zimmerman, Esq.

² On April 30, 2013, subject to the Protective Order, Travelers filed its Motion for Summary Judgment Against Okland Re: Extra-Contractual Claims. (ECF No. 157). In support of this Motion, Travelers filed the Declaration of Nicolo D'Agostino with several supporting exhibits. (ECF No. 158). In addition, on June 24, 2013, subject to the Protective Order, Travelers filed its Reply In Support of its Motion for Summary Judgment Against Okland Re: Extra-Contractual Claims. (ECF No. 190). In support of this Reply, Travelers filed the Declaration of Thomas Lether with several supporting exhibits. (ECF No. 191).

3. The following documents filed by Plaintiff Okland Construction Company, Inc. (“Okland”) shall be protected pursuant to the Protective Order as Level 1 Restricted:³

ECF Filing and Page No.	Description
ECF No. 179-12	October 5, 2011 Email Correspondence Regarding Settlement and Attaching Repair Estimate from Ivan Sarkissian, Esq.
ECF No. 179-21	June 14, 2011 to July 17, 2011 Correspondence between Counsel and Claims Analysts Regarding Settlement and Costs to Repair
ECF No. 179-31	September 15, 2011 Email Correspondence Regarding Claim Handling from David W. Zimmerman, Esq., to Nicolo D’Agostino
ECF No. 179-41	September 22, 2011 Email Correspondence Ivan Sarkissian, Esq. Regarding Settlement

4. Documents identified in Paragraphs 1-3 of this Order (hereinafter “Restricted Documents”) must be restricted with a Level 1 restriction because these Restricted Documents contain confidential and/or attorney-client privileged information that should be protected from use by persons or parties not involved in this case, especially given that litigations are pending involving the same facts and circumstances at issue in this case.

5. It is not practical to address these concerns through redaction, because the degree of redaction necessary to eliminate all confidentiality concerns would render most, if not all of the Restricted Documents meaningless. For the same reason, summarization or other means would not be practical.

6. Restricting access to the Restricted Documents is necessary to protect release of confidential information regarding the underlying Rivergate claims and settlement, and preserve the confidentiality of the communications between Okland and its insurance carriers.

³ On May 30, 2013, subject to the Protective Order, Okland filed its Response to Defendants’ Motions for Summary Judgment (ECF Nos. 157, 160). In support of this Motion, Okland filed the Declaration of Jose A. Ramirez with several supporting exhibits. (ECF No. 179).

7. Restricting access to the Restricted Documents to the Parties and the Court will not adversely affect the litigation of this dispute.

SO ORDERED this 8th day of July, 2013, by:

s/Lewis T. Babcock
Judge Lewis T. Babcock