

development, or commercial information” within the meaning of Fed. R. Civ. P. 26(c), and the Court so finds. In addition, the protection of certain information from unnecessary disclosure is necessary to protect the privacy of the parties and non party witnesses and, under Fed. R. Civ. P. 26, is necessary to protect them from “annoyance” and “embarrassment.”

Accordingly, the parties have hereby stipulated and agreed – and the Court now finds that good cause has been shown and therefore Orders – that discovery in this action shall be subject to the following restrictions and that the following terms and conditions shall govern the treatment of Confidential Information in this proceeding. Any reference to “this action” shall mean the consolidated action whose caption is listed above and any individual action that is consolidated with it, whether such consolidation occurs before or after entry of this order. In the event that individual action is consolidated with this action, but later is severed from this action for any reason, this order shall continue in effect in such severed individual action until further order of any court assuming jurisdiction over such individual action.

1. **“Confidential Information.”** “Confidential Information” refers to information, documents, or other material that the designating party produces or provides in discovery and reasonably and in good faith believes constitutes or reflects trade secrets or information whose confidentiality is otherwise protectable under applicable law. This includes but is not limited to confidential research, development, or commercial information (as those terms are used in Fed. R. Civ. P. 26(c) and applicable state law), and other information reasonably sought to be kept confidential, but does not include information, documents, or other material known to or rightfully in the possession of a non-designating party at the time this Order is entered.

2. **Designation of Confidential Information.** Any party may reasonably designate any document containing Confidential Information, or portion thereof, which it may produce as “Confidential” by labeling the document to be so designated substantially as follows: “CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER”

3. **Use of Confidential Information.** Anyone who is provided with access to Confidential Information under this Order shall use such information solely in connection with this action, shall keep such information strictly confidential, and shall in no way disclose such information, or any portion, summary, abstract or other derivation thereof, to any firm, person, or entity, except as provided in paragraph 4. Every person or party receiving Confidential Information of another shall maintain such information in a manner consistent with its own Confidential Information.

4. **Disclosure of Confidential Information.** Confidential Information shall not be freely or routinely disclosed to persons employed by or affiliated with any person or entity engaged in manufacturing, marketing, selling, dispensing, purchasing, acquiring or using ready mixed concrete products or ingredients thereof. Access to Confidential Information shall be limited to:

A. *Attorneys.* Attorneys of record and other personnel in their law firm(s) (including other attorneys, paralegals, contractors and other staff personnel (collectively “staff personnel”)) who require access for the purpose of representing any party in this action.

B. *Named parties.* The named parties in this action, which in the case of a business entity shall mean the individual owners, executives or employees of the entity, but only to the extent necessary to enable such persons to assist counsel in representing such party in this action.

C. *Experts and consultants.* Outside experts or consultants retained by a party for this action.

D. *Actual or Potential Witnesses.* Witnesses who actually do or potentially may (in the sole judgment of counsel for the party providing access to Confidential Information to such actual or potential witness) testify.

E. *Deposition videographers.* Videographers appearing at depositions, hearings, or trial.

F. *Court and Court Officers.* The Court and its personnel, including court reporters appearing in court or recording depositions or statements under oath.

G. *Deponents.* Persons or entities appearing for deposition.

H. *Other persons.* Without the necessity of further Court order, any other person who counsel for the designating party agrees may have access to the Confidential Information.

5. **Non-Waiver of Confidentiality or Objection to Production.** Review of Confidential Information by any person in paragraph 4 shall not waive the confidentiality of that information and shall not waive any objection to production or use of that information.

6. **Execution of Agreement To Comply With Stipulated Protective Order (Attachment A).** Each person who is permitted access to Confidential Information under paragraph 4 (B), (C), (D), (E), or (H) shall first be shown a copy of this Order, shall be advised of the obligation to honor the confidentiality designation, and shall sign the Agreement To Comply With Stipulated Protective Order (“Agreement”) that is attached as Attachment A. Any attorney of record in this action who provides such access to any such person shall retain that person’s signed Agreement in his or her files during the pendency of this action, and upon request by the Court shall make the signed Agreement available for in

camera inspection by the Court. Such Agreements shall not be disclosed to any other party or counsel. Each person who is permitted access to Confidential Information under paragraph 4(G) and who is not a party to the action shall first be shown a copy of this Order, shall be advised that they are subject to the terms of the Order and advised of the obligation to honor the confidentiality designation, and shall not be permitted to take from the deposition copies of any exhibits that are designated as Confidential Information.

7. **"Current Confidential Information."** "Current Confidential Information" refers to Confidential Information that the designating party is using or generating in the course of its operations as of or proximate to the date on which the party produces or provides such information. For purposes of this Protective Order, Confidential Information that has been used or generated within twelve (12) months of the date on which the information is produced or provided may be designated as Current Confidential Information with a label substantially similar to following: "CONFIDENTIAL (CURRENT): SUBJECT TO PROTECTIVE ORDER". All of the provisions of this Protective Order applicable to Confidential Information are applicable to Current Confidential Information, *provided however*, that persons described above in paragraphs 4(B) and 4(D) who are employed by or affiliated with any person or entity engaged in developing, manufacturing, marketing, selling, dispensing, purchasing, acquiring or using Ready-Mixed Concrete, shall *not* have access to Current Confidential Information except as follows:

Before any party discloses information designated as Current Confidential Information by another party to any person described above in paragraphs 4(B) and 4(D) who is employed by or affiliated with any person or entity engaged in developing, manufacturing, marketing, selling, dispensing, purchasing, acquiring or using Ready-Mixed Concrete, the party wishing to make the disclosure shall give notice in writing at least 10 days in advance of the disclosure, to counsel for the party who designated such information as Current

Confidential Information. Notice shall contain the names and addresses of the persons to whom such disclosure will be made and a description of the Current Confidential Information to be disclosed. If within the 10-day period, the designating party objects to the disclosure, counsel shall consult with each other to reach an agreement. Failing that and with good cause shown, the designating party may file a motion objecting to the disclosure. Disclosure shall not be made pending the Court's ruling on such motion. The Court will deny the motion unless the objecting party shows good cause why the proposed disclosure would cause substantial harm to its legitimate business interests.

The provisions of this Paragraph 7 shall not apply to the use of Current Confidential Information during any deposition taken in this consolidated litigation.

8. **Inadvertent Disclosure of Confidential Information.** The inadvertent, unintentional, or *in camera* disclosure of Confidential Information shall not be deemed a waiver, in whole or in part, of any party's claim of confidentiality. Within a reasonable time of discovering such inadvertent or unintentional disclosure, any party to this Order may advise the other parties that the Confidential Information is to be designated as Confidential under the terms of this Order.

9. **Inadvertent Disclosure of Privileged Information.** In the interest of expediting discovery in these proceedings and avoiding unnecessary costs, (a) inadvertent or unintentional disclosure in this litigation of privileged information and/or work product shall not be deemed a waiver, in whole or in part, of any otherwise valid claim of privilege, immunity, or other protection; and (b) failure to assert a privilege and/or work product objection in this litigation as to one document or communication shall not be deemed to constitute a waiver, in whole or in part, of the privilege, immunity, or other protection as to any other document or communication allegedly so protected, even involving the same subject matter, provided that the notice and other provisions of this paragraph are followed.

In the case of inadvertently produced privileged and/or work product documents, upon the recipient becoming aware that he or she has received such documents that clearly were inadvertently produced, or upon a request made by the producing party, the documents together with all copies made of them shall be returned forthwith to the party claiming privilege and/or work product immunity. Any party may, within five (5) court days after notification of inadvertent disclosure under this paragraph, object to the claim of inadvertence by notifying the designating or producing party in writing of that objection and specifying the designated or produced material to which the objection is made. The parties shall confer within fifteen (15) days of service of any written objection. If the objection is not resolved, the designating party shall, within fifteen (15) days of the conference, file and serve a motion to resolve the dispute. Information subject to dispute shall be treated consistently with the designating or producing party's most recent designation until further order of this Court or the designating party's failure to file within the fifteen day period.

10. **Depositions.** Any deposition which a party determines will or might reasonably include disclosure of Confidential Information shall be attended only by those persons entitled to receive such Confidential Information pursuant to this Order, but this shall not be construed to allow any such person to attend a deposition he or she otherwise would not be allowed to attend. During a deposition, any party may ask the reporter to designate certain portions of the testimony as Confidential, in which case the Confidential portions shall be separately transcribed and labeled as "Confidential – Subject to Protective Order." In addition, within thirty (30) days after a copy of the transcript taken at the deposition is delivered to the parties, counsel for any party may designate the entirety or any specified portion of the transcript or exhibits thereto as Confidential by letter to counsel for the other parties. Until such thirty-day period expires, the entirety of such transcripts and all exhibits

thereto shall be treated as Confidential and subject to this Order. After such thirty-day period expires, such transcripts, exhibits or portions thereof designated as Confidential shall be treated as such under this Order. If no such designation is made within thirty days, such transcripts or exhibits shall not be subject to this Order, except for good cause shown by the designating party. Nothing in this Order shall preclude the parties from modifying this Order or making any other agreement with respect to Confidential Information for the purposes of any particular deposition by making an agreement on the record at any deposition.

11. **Filing With Court.** In filing materials with the Court in pretrial proceedings, counsel shall file under seal only those specific documents and that deposition testimony designated as Confidential, and only those specific portions of briefs, applications, and other filings that either contain verbatim Confidential Information or set forth the substance of such Confidential Information. The Court retains the power, either upon motion of any interested party or on its own motion, to determine whether materials filed under seal shall remain sealed. Any such Confidential Information shall be filed under seal, in a sealed envelope (or other sealed container) marked with the title of this action, the title of each such transcript or document being filed, and a statement substantially in the following form:

CONFIDENTIAL

Pursuant to the Order of the Court dated March 2, 2006, this envelope containing the above-entitled transcripts or documents filed by [the name of the party], is not to be opened nor the contents thereof displayed or revealed, except in accordance with an Order of the Court.

12. **Objection to Designation.** If any party to this action disputes the designation of any document or information as Confidential Information, before seeking the assistance of

the Court, the parties must first confer in good faith in an attempt to resolve the question of whether or on what terms the document or information is entitled to Confidential treatment. The party objecting to the Confidential designation shall notify the designating party, and the designating party shall respond within ten (10) days after receipt of such notice. If the parties are unable to agree as to whether the document or information is properly designated as Confidential Information, the party objecting to the designation may file an appropriate motion with the Court. Until a resolution of the dispute is achieved either through consent or Court Order, the parties shall treat the designated document or information as Confidential Information.

13. **Return of Confidential Information Upon Termination.** Upon the termination of this consolidated action and any individual action consolidated with this action, whether by Court order, judgment, settlement, or otherwise, including the termination of any appeals, each party shall return to the producing party or witness all documents designated as Confidential and all copies or reproductions of such documents. The return of Confidential materials shall be completed within thirty (30) days after termination of this consolidated action and any related individual action. Any work papers, work product, notes, analyses, or other documents that contain any Confidential Information shall remain subject to this Order until such time as they are destroyed, and the obligation to keep Confidential Information confidential shall survive the final termination of this action and shall continue in effect as long as any party or person retains the Confidential Information of any other party or person.

14. **Request to Produce Confidential Information by Subpoena or Otherwise.** If any party who has received Confidential Information is asked to produce such information, by subpoena or otherwise, for purposes of use in any legal action or proceeding (other than

an individual action consolidated with this action), the party receiving such a request shall promptly inform the producing party that such request has been received and shall object to such request on the basis of this Order. The party designating the information as Confidential Information shall also have standing to object to the subpoena or other request for production of the Confidential Information.

15. **Waiver of Privilege and Admissibility.** Nothing in this Order shall be deemed a waiver of any type of privilege or other protection applicable to any type of information in this or any other action or proceeding. Nothing in this Order shall be construed to affect the evidentiary admissibility or use of any Confidential Information. Nothing in this Order shall preclude any party from seeking additional or other protection or relief from the Court or from opposing the production of documents or disclosure of information on any grounds.

16. **Use of Documents Acquired Lawfully or Through Other Litigation.** This Order shall not prevent any persons bound hereby from making use of any document or information without the restrictions of this Order if the document or information came into their possession lawfully, including without limitation through discovery in any other litigation in which such document or information was not designated “Confidential,” was not subject to a protective order or other restrictive court order, or where there has been a final judgment (including any appeal therefrom) where the document or information was deemed to be not confidential.

17. **Non-Party’s Confidential Information.** Any non-party producing discovery material or giving deposition testimony in this action may avail herself, himself, or itself of the confidential treatment provided for in this Order for her, his, or its discovery material or

testimony by following the procedures provided herein. This Order shall be binding on such non-parties unless they object to its terms within 10 days of service upon them of this Order.

18. **Others' Challenges to Confidentiality Designation.** Nothing contained herein shall prevent a member of the general public from filing a motion with the Court contesting any party's designation of information as confidential, seeking to have information filed under seal unsealed, or seeking an order permitting the disclosure of Confidential Information to non-party witnesses. Nothing shall prevent disclosure beyond the terms of this order if the party designating the materials or testimony as confidential either publicly discloses such information or consents in writing to such disclosure, or if the Court, after notice to all affected parties, orders such disclosure and there has been a final judgment (including conclusion of any appeal therefrom) on this issue.

19. **Modification.** This Order shall not prevent any party or person from applying to the Court for modification of the Order or for further relief.

20. **Failure to Comply.** Failure to comply with this Order shall be a basis for monetary sanctions or other appropriate relief.

21. **Subtitles.** The subtitles in this Order have been provided for convenience only and are not to be considered in construing or interpreting the meaning of this Order.

SO ORDERED: 03/02/2006

V. Sue Shields

V. Sue Shields, Magistrate Judge

Copies to all counsel of record registered to receive electronic notice

(NAME)

(ADDRESS)

(CITY) (STATE) (ZIP)

(TELEPHONE NUMBER)

STATE OF _____)
) ss.
COUNTY OF _____)

Subscribed and sworn to, before me a Notary Public, this _____ day of _____, 2006.

(SEAL)

Notary Public

Typed or Printed Name