

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

JAN 15 1987

TURNER & NEWALL PLC,

Plaintiff,

v.

CANADIAN UNIVERSAL INSURANCE CO.,
FIRST STATE INSURANCE COMPANY,
LEXINGTON INSURANCE COMPANY and
NEW ENGLAND REINSURANCE CORPORATION,

Defendants.

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 86-0801

Judge Harold H. Greene

FILED

OCT 3 - 1986

STIPULATION AND PROTECTIVE ORDER

CLERK, U. S. DISTRICT COURT
DISTRICT OF COLUMBIA

IT IS HEREBY STIPULATED AND AGREED by and between the under-
signed, subject to the approval of the Court, that all documents
and information which are specifically stamped, marked or other-
wise designated by the producer or its agents as "confidential"
as required herein, may be used by any other party to the above-
entitled actions for all purposes described below and subject to
the following conditions, safeguards and limitations:

1. The term "Confidential Material," as used herein, shall
mean as follows: sensitive business or proprietary information
or documents, the disclosure of which might adversely affect a
party's competitive position or business operations, or might
adversely affect or prejudice the positions taken by the plain-
tiff in its litigation of the underlying building claims. The
parties will use their best efforts to limit the number of docu-
ments designated as confidential.

The ways in which Confidential Material may be
transmitted include, but are not limited to, the following:



ATTACHMENT V

(a) documents produced in response to formal or informal document requests;

(b) interrogatory answers, including documents used in answer to interrogatories;

(c) depositions, including exhibits;

(d) admissions; and

(e) at the settlement conferences held on June 16, June 27, and July 17, 1986, and any other conferences designated by a party as a settlement conference.

2. (a) The term "producer," as used herein, shall mean a party to this action ("party"), or a non-party that produces information, including documents, responses to interrogatories and requests for admissions, and deposition testimony, in this action.

(b) The term "this action," as used herein, shall mean Turner & Newall, PLC v. Canadian Universal Insurance Co., et al., Civ. Action No. 86-0801.

3. Confidential Material subject to this Order, shall be used solely for the purpose of conducting this litigation and other litigation or proceedings where insurance coverage for asbestos-related claims with respect to Turner & Newall PLC or its subsidiaries or affiliates, or any successor, or predecessor corporation or entity is at issue (referred to collectively herein as "this litigation"), so long as those other litigations or proceedings provide confidential protection for Confidential

Material that is comparable to the protection provided herein, and for no other purpose.

4. The following persons shall be the only persons to whom Confidential Material may be disclosed:

(a) counsel employed by a party or any employee of such counsel to whom it is necessary that disclosure be made for purposes of this litigation as defined in ¶ 3;

(b) any person not employed by a party who is expressly retained or subpoenaed by any party for the purposes of testifying or rendering assistance or providing opinions in this litigation, but only to the extent necessary for such person to perform his or her assigned tasks;

(c) any director, officer or employee of a party who is requested by that party or any of its attorneys to work on this litigation;

(d) the Court, Court personnel, Court reporters, or other personnel involved in the adjudicative process; and

(e) Any person of whom testimony is taken or may be taken in any litigation as defined in ¶ 3 except that such a person may only see and retain copies of Confidential Material during his or her testimony, in preparation therefor, or in discussions of possible testimony, and may not thereafter retain any Confidential Material.

Any person who makes any disclosure of Confidential Material permitted under this paragraph shall advise each person

to whom such disclosure is made concerning the terms of this Order.

5. With respect to any Confidential Material designated in conformance with this Order, a party by its counsel, may at any time serve a written notice of objection to such designation upon the producer's counsel (with copies to counsel for every other party). Such notice shall identify specifically the materials as to which the objecting party wishes to have the designation removed (declassified) and specify the reasons for such declassification. Such objection may state that declassification is desired generally or for a specific purpose. The producer shall, within 20 days of receipt of such notice, review the designated material sought to be declassified and notify every party in writing whether or not the producer will agree to the declassification requested. If no agreement can be reached between the objecting party and the producer, any party shall be free to move the Court for an order of declassification of such specified material, which motion shall set forth a description of the nature of the designated material in question and the reasons why the moving party believes it should be declassified. The producer shall have the burden of demonstrating that the Confidential Material for which declassification is sought is in fact confidential. The designated material in question shall continue to be treated as Confidential Material subject to the terms of this Order until the Court acts on the motion, and thereafter if the Court's ruling does not declassify the material.

6. To be deemed confidential, the following legend shall be placed on the face of the document: "CONFIDENTIAL MATERIALS. Subject to Protective Order in Turner & Newall PLC v. Canadian Universal, et al., Civ. Action No. 86-0801." The legend will be placed on each such document within thirty days after the documents are identified for copying and before they are distributed to the parties. In lieu of marking this notation on the originals of documents, the producer may mark the copies that are produced. All documents produced by the plaintiff on or about June 26, 1986 are deemed confidential, whether or not marked "confidential."

7. Information disclosed at the deposition of persons associated with or employed by a producer or of persons who otherwise have access to confidential material and of a party or one of its present or former officers, directors, employees, agents, or an independent expert retained by a party for purposes of this litigation may be designated by the producer or party as confidential by indicating on the record at the deposition that the testimony encompasses confidential information. If such designation is made, the following legend shall be placed on the original and each copy of the transcript identifying the pages of the deposition so designated as Confidential Material: "CONFIDENTIAL MATERIAL. Subject to Protective Order in Turner & Newall PLC v. Canadian Universal, et al., Civ. Action No. 86-0801."

The producer or party may also designate information disclosed at such deposition as confidential by notifying all

parties in writing, within fifteen days of receipt of the transcript, of the specific pages and lines of the transcript which contain confidential information. Each producer or party shall attach a copy of such written statement to the face of the transcript and each copy thereof in his possession, custody or control. Each deposition shall be treated as confidential for a period of fifteen days after a full and complete transcript of such deposition is available. Copies of deposition transcripts in this action shall not be filed with the court except upon motion of a party and court order.

8. Any Confidential Material submitted or presented to, or filed with, the Court prior to trial shall be placed under seal and made unavailable to persons other than the Court and persons authorized by this Order. Any party may introduce any document or information covered by this stipulation into evidence at any hearing or trial of this action, provided that counsel for such party gives counsel for the producer reasonable notice of their intention to use such documents or information, to allow the producer's counsel the opportunity to seek an order of the Court protecting such confidential information from public disclosure.

9. (a) In the event that a producer produces to any other party any document which is considered by the producer to be confidential, or privileged in whole or in part pursuant to the attorney-client privilege or work product doctrine, the confidential or privileged document may be retrieved by the producer as follows:

(i) Within 30 days prior to the Court-ordered cut off of all discovery, the producer must give written notice to all parties who received copies of the produced document that the producer claims said document, in whole or in part, to be privileged and identify:

- A. the nature of the document (e.g., letter or memorandum);
- B. the date of the document or date it was prepared;
- C. the name and title of the persons who prepared, sent and received the document;
- D. the subject matter of the document;
- E. the privilege or claim of confidentiality being asserted;
- F. the specific grounds for assertion of that privilege or claim of confidentiality, and
- G. the document identification number.

(ii) Upon receipt of such notice, all parties or other persons who have received a copy of the produced document shall promptly return it to the producer and destroy any other copies thereof. In the event that only part of a document is claimed to be privileged, the producer shall provide redacted copies of such document, removing only the part(s) thereof claimed to be privileged, to all parties within 10 days.

(iii) The terms of this paragraph shall not be deemed a waiver of a party's right to contest the producer's designation of documents as privileged.

(b) Production of a document that is subsequently retrieved pursuant to this paragraph shall not be deemed, and will not be alleged by any party, to be a waiver of the privilege asserted.

(c) The parties will use their best efforts to limit the number of documents retrieved under this paragraph.

10. At the conclusion of this action (or of any other litigation as defined in ¶ 3), the parties agree to:

(a) return all Confidential Materials, including copies thereof, to the producer; or

(b) destroy all such materials and copies thereof, or

(c) maintain all Confidential Materials in conformity with this Order and the agreements embodied herein, which, under this provision shall survive the termination of any litigation as defined in ¶ 3 and continue in full force and effect.

11. Nothing in this Order shall be construed in any way to control the use, dissemination, publication, or disposition by any party of documents or information received at any time by that party outside the discovery process in this action.

Dated: Washington, D.C.
September 23, 1986

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SO ORDERED:

W. L. Sene
U.S.D.J.