

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

AXIALL CORPORATION and
WESTLAKE CHEMICAL CORPORATION,

Plaintiffs,

vs.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA.; ALLIANZ
GLOBAL RISKS US INSURANCE COMPANY;
ACE AMERICAN INSURANCE COMPANY;
ZURICH AMERICAN INSURANCE COMPANY;
GREAT LAKES INSURANCE SE; XL
INSURANCE AMERICA, INC.; GENERAL
SECURITY INDEMNITY COMPANY OF
ARIZONA; ASPEN INSURANCE UK LIMITED;
NAVIGATORS MANAGEMENT
COMPANY, INC.; IRONSHORE SPECIALTY
INSURANCE COMPANY; VALIDUS
SPECIALTY UNDERWRITING SERVICES,
INC.; and HDI-GERLING AMERICA
INSURANCE COMPANY,

Defendants.

Civil Action No. 19-C-59

Judge Christopher C. Wilkes

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FILED

STIPULATED PROTECTIVE ORDER

WHEREAS, the parties in this action, Defendants, National Union Fire Insurance Company of Pittsburgh, Pa.; Allianz Global Risks US Insurance Company; ACE American Insurance Company; Zurich American Insurance Company; Great Lakes Insurance SE; XL Insurance America, Inc.; General Security Indemnity Company of Arizona; Aspen Insurance UK Limited; Navigators Management Company, Inc.; Ironshore Specialty Insurance Company; Validus Specialty Underwriting Services, Inc.; and HDI-Gerling America Insurance Company (collectively "Insurers") and Plaintiffs, Axiall Corporation and Westlake Chemical Corporation

(collectively, "Axiall/Westlake"), and third parties from whom discovery may be sought in this action, possess confidential information that may be disclosed in responding to discovery requests, or otherwise in this action, and that should be protected in order to preserve the legitimate business interests of the parties;

WHEREAS, Axiall/Westlake and Insurers have, through counsel, stipulated to this Protective Order to prevent unnecessary dissemination or disclosure of such confidential information; and

WHEREAS, the parties recognize that confidential information is being produced only for use in this civil action.

IT IS HEREBY AGREED that:

1. **Definitions**

- a. The term "Confidential Material" shall mean any form of material that the designating party in good faith reasonably believes contains sensitive or confidential information, the disclosure of which might adversely affect the designating party's competitive position in its business operations or might adversely affect or prejudice the legitimate interests or position of the designating party with respect to matters outside the scope of this action. The term "Confidential Material" shall include the document, information, or material so designated, and the contents thereof.
- b. Confidential Material may include, without limitation, documents, electronically stored information ("ESI") and things produced in this action, during formal discovery or otherwise; information produced by non-parties which the producing or designating party is under an obligation to maintain

in confidence; responses to discovery requests; deposition, hearing, or trial transcripts; expert reports; and tangible things or objects that are designated as containing or comprising Confidential Material. The information contained therein and all copies, abstracts, excerpts, analyses, or other writings that contain, reflect, reveal, suggest, or otherwise disclose such information shall also be deemed Confidential Material. Information originally designated as Confidential Material shall not retain that status after any ruling by the Court denying such status to it.

- c. The term "Privileged Information" shall mean documents or ESI protected from disclosure by the attorney-client privilege, work product privilege, or other applicable protections or privileges.
- d. The term "designating party" shall mean the party designating documents or information as Confidential Material under this Order.
- e. The term "receiving party" shall mean the party to which Confidential Material is disclosed.
- f. Notwithstanding anything to the contrary herein, the description of Confidential Material shall apply to all information so designated by the designating party absent an order of the Court or subsequent written agreement of the designating party providing otherwise.

Designation of Confidential Material

- 2. Each designating party that produces or discloses any material it believes contains or comprises Confidential Material shall designate the same by marking or stamping the word "CONFIDENTIAL" on the face of the document and/or on ESI media and its packaging containing

the Confidential Material in a conspicuous location, and on each page of any document that contains Confidential Material. Documents which the designating party produces in native electronic format (e.g., Microsoft Excel files, audio/visual files, etc.) may be designated by (i) stamping the word "CONFIDENTIAL" on a corresponding TIFF or PDF image file bearing the same Bates number as the designating party assigns to the native file, (ii) linking a "CONFIDENTIAL" designation to the Bates number assigned to the native file in a production metadata load file, and/or (iii) including the word "CONFIDENTIAL" in the file name of the native file. When documents, ESI, or tangible things are produced for inspection, the documents, ESI, or tangible things may be collectively designated as containing Confidential Material for purposes of the inspection, by letter or otherwise, without marking each document or thing "CONFIDENTIAL," and such documents or things will be treated as Confidential Material under this Order.

3. If any Confidential Material is produced by a non-party to this action, such a non-party shall be considered a "designating party" within the meaning of that term as it is used in the context of this Order, and all parties to this Order should be treated as receiving parties. The parties recognize that during the course of this action, Confidential Material that originated with a non-party, and for which there exists an obligation of confidentiality, may be produced by a party. Such information that the producing party believes originated with a non-party, but is subject to a confidentiality obligation, may be designated as Confidential Material by the producing party and shall be subject to the restrictions on disclosure of Confidential Material specified in this Order.

4. The designation of Confidential Material may be made at the time of copying of documents or reproduction of ESI for production to the receiving party. Any Confidential Material designation that is inadvertently omitted at the time of copying or reproduction may be corrected

by written notification to counsel for all receiving parties, and all receiving parties shall thereafter mark and treat all copies of the material and/or ESI as Confidential Material. Materials and/or ESI designated as Confidential Material after copying and/or reproduction shall be fully subject to this Protective Order as if they had been initially so designated.

Use of Confidential Material

5. Except upon the prior written consent of the designating party, Confidential Material shall be used solely in connection with this action and may be disclosed solely in accordance with the terms of this Protective Order, except that nothing shall prevent any person from making use of any information designated as Confidential Material if such information:

- a. was lawfully in his or her possession prior to receipt of this Protective Order and not subject to any other obligation to keep such materials confidential, provided, however, that information exchanged by the parties during the investigation of the insurance claims at issue in this action may be designated as Confidential Material on a going-forward basis and made subject to the restrictions of this Paragraph 5 if such previously exchanged information is designated as Confidential Information during discovery in this action;
- b. was or becomes available to the public through no fault of a receiving party;
- c. was or is lawfully obtained from a source not subject to this Protective Order and not subject to any other obligation to keep such materials confidential;
or
- d. is exempted from the operation of this Protective Order by written consent of all parties.

6. With the exception of the Court, court personnel, court reporters, and representatives of the designating party, access to Confidential Material shall be limited to:

- a. counsel to the parties and their legal associates, paralegals, clerical, support staff, and organizations/individuals retained by counsel to provide litigation support services in this action and the employees of those organizations;
- b. a party or a party's present and former officers, directors, and employees;
- c. any entity or authorized representative of such entity to whom a party has a statutory, contractual, or other legal obligation to report or cooperate concerning this action, including but not limited to auditors, accountants, insurers, or re-insurers, etc.;
- d. retained consultants or experts and their employees in accordance with the provisions of Paragraph 7 below, or other procedures as may be agreed upon among all parties; and
- e. such other persons who the parties may designate by written agreement or by Court Order, permitting additional disclosure.

7. Confidential Material shall not be disclosed to any person under Paragraph 6 above unless and until:

- a. for purposes of Subparagraphs 6(a), (b), (c), and (e) above, such person has been advised of the existence of this Protective Order and has been instructed that he or she is bound by its terms; or
- b. for purposes of Subparagraph 6(d) above, such person has been shown a copy of this Protective Order and has agreed in writing, to be bound by its terms. The executed certifications set forth in this subparagraph are not

required to be provided to the opposing party in this action. The written agreement/certification shall be as follows:

Non-Disclosure Agreement

My name is _____. My address is _____. I certify that I have read and fully understand the terms and provisions of the Stipulated Protective Order that has been entered by the Court in the lawsuit styled *Axiall Corporation and Westlake Chemical Corporation v. National Union Fire Insurance Company of Pittsburgh, Pa.; Allianz Global Risks US Insurance Company; ACE American Insurance Company; Zurich American Insurance Company; Great Lakes Insurance SE; XL Insurance America, Inc.; General Security Indemnity Company of Arizona; Aspen Insurance UK Limited; Navigators Management Company, Inc.; Ironshore Specialty Insurance Company; Validus Specialty Underwriting Services, Inc.; and HDI-Gerling America Insurance Company*; Civil Action No. 19-C-59; pending in the Circuit Court of Marshall County, West Virginia, Business Court Division. I am aware that upon the issuance of a final order I will comply with Paragraph 21 of the Stipulated Protective Order.

I agree to comply fully with the terms of the Stipulated Protective Order. I will not disclose any Confidential Material in any form to any person other than those expressly authorized under the Stipulated Protective Order, and I will not use any Confidential Material for any purpose other than in connection with the prosecution or defense of this action. This pledge applies to all Confidential Material, whether already disclosed to me, or disclosed to me in the future, and also applies to copies, notes, extracts, or any other materials I prepare based upon Confidential Material. I understand that violation of the Stipulated Protective Order or of this Agreement may be subject to sanctions by the Court.

I also agree to be bound by the terms of the Stipulated Protective Order with respect to any inadvertent production of privileged materials or materials subject to the protection of the work-product doctrine.

/s/ _____

Date: _____

8. The designation of any documents, information, or ESI as CONFIDENTIAL shall not preclude any party from showing such Confidential Material to any person who appears as the author or as an addressee or recipient on the face of the documents, information, or ESI, or who

appears as a witness in this action in a deposition or at trial, or who has been provided with the documents, information, or ESI therein by the designating party pursuant to Paragraph 6.

9. Confidential Material may be used in connection with the deposition of any person in this action, provided that the deponent, if not otherwise obligated under this Protective Order, is informed of the requirements of this Order. All deposition testimony concerning Confidential Material shall itself be considered Confidential Material along with any deposition exhibits containing Confidential Material, and the transcript, or portions thereof, shall be stamped "CONFIDENTIAL."

10. Any party may appropriately designate a transcript, or portions of the transcript, of depositions or hearings as containing Confidential Material using the designation procedures set forth above, provided that written notice of such designation is given to the other party within fourteen (14) days after receipt of the transcript. Following such notice, the parties shall confer as to the most convenient way to effect such designations.

11. Absent consent by the designating party, in the event that counsel for any party decides to file with the Court any pleadings, motions, briefs, or other papers which contain or make reference to Confidential Material, such papers shall be filed under seal or submitted to the Court in such manner as is agreed upon by the parties hereto (or ordered by the Court) with a statement on the cover of any such material identifying that Confidential Material subject to this Protective Order is contained within. All such material shall be accepted by the Court for filing and shall be maintained separate from the public records in this action and shall be released only upon further Order of the Court. Where possible, only confidential portions of the filings with the Court shall be filed under seal. The failure by the designating party to file any Confidential Material with the

Court under seal in no way alters or waives the protected and confidential nature of said material, which remains subject to the restrictions and limitations set forth in this Protective Order.

12. A party's compliance with the terms of this Protective Order shall not operate as an admission that any particular material is, or is not, confidential.

13. Nothing in this Protective Order shall prevent any party from using or disclosing, in any manner it chooses, material that it has itself designated as Confidential Material.

14. A designating party shall make good-faith designations as Confidential Material documents, information, or other tangible items the public disclosure of which it reasonably believes would result in the disclosure of trade secrets, proprietary material, or other confidential business or personal information. In the event that the receiving party disagrees with the designation by the designating party of any information as Confidential Material, the parties shall first try to resolve such dispute on an informal basis. If the parties cannot resolve the dispute, the receiving party may challenge the designation of Confidential Material by motion to the Court. No party shall reveal another party's designated Confidential Material except in accordance with this Protective Order, until such time as the designation has been withdrawn, either voluntarily by the designating party, or pursuant to an order of the Court.

Privileged and Protected Information

15. Pursuant to West Virginia Rule of Evidence 502(d) and the Stipulated Order Concerning Document Production and Inspection Protocol entered in this Action, the production of information, documents, or ESI that is privileged or protected in whole or in part, whether said production was inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case, subject to compliance with the requirements of Paragraphs 17 and 18 herein, or in any other federal or state proceeding. Furthermore, regardless of the steps taken to prevent disclosure,

if a party produces information that it later discovers to be privileged or otherwise protected from disclosure, the party receiving the privileged or protected information may not argue that the producing party failed to take reasonable steps to prevent production of the privileged or protected materials.

16. If a receiving party discovers that it is in receipt of a document or ESI that it reasonably believes contains Privileged Information, it shall notify the producing party, and identify the document in question, within ten (10) business days of such discovery.

17. Upon discovery by a producing party (whether by notice from the receiving party, or otherwise) that it did produce, or may have produced, Privileged Information, the producing party shall, within ten (10) business days of such discovery, request the return of such Privileged Information by sending a written notification ("Clawback Letter") to the receiving party, which shall identify the documents or ESI in question by Bates number or otherwise and the basis on which the privileged information should have been withheld from production. The requirements in this paragraph apply equally to instances in which a producing party discovers during a deposition that it did or may have produced Privileged Information. For purposes of this Order, "discovery" shall mean "actual notice." Production of Privileged Information alone is insufficient to constitute actual notice.

18. Upon receipt of a Clawback Letter, the receiving party shall, within ten (10) business days, either: (1) return or destroy, at the option of the producing party, all copies and/or reproductions and/or summaries of the inadvertently produced privileged or protected material, and provide written notice to the producing party confirming the return or destruction of the material., or (2) notify the producing party that it disputes the application of the privilege or protection asserted. If the application of the asserted privilege or protection is disputed by the

receiving party, within ten (10) business days thereafter, the producing party may file a motion seeking to establish the application of the asserted privilege or protection. If the producing party does not file a motion within ten (10) business days of the receiving party disputing the application of the asserted privilege or protection, the assertion of privilege or protection will be deemed withdrawn. Until the disputed assertion of privilege or protection is withdrawn or is resolved by the Court, the receiving parties shall keep the disputed material in a secure location and not use it for any purpose. The fact that the document and/or ESI was produced in discovery shall not constitute, nor be argued to constitute, a waiver of the privilege or protection. If the Court upholds the application of the asserted privilege and/or protection, the receiving party shall, within ten (10) business days of the Court's ruling, return or destroy, at the option of the producing party, all copies and/or reproductions and/or summaries of the inadvertently produced privileged or protected material, and provide written notice to the producing party confirming the return or destruction of the material.

Other Matters

19. Nothing in this Protective Order shall require the production of information or documents that are privileged or otherwise protected from discovery. Participation in this agreement is not a waiver by any party of any rights, privileges, or protections.

20. Nothing in this Protective Order shall operate as an admission that any particular document or item of information is, or is not, admissible in evidence at the trial of this action.

21. Within ninety (90) days after the conclusion of this action (including any appeal), the parties shall destroy all Confidential Material or return it to the producing party, and, further, each party shall certify to the other parties that such destruction or return has been completed. Notwithstanding the foregoing, the receiving party and their counsel may retain for their archives:

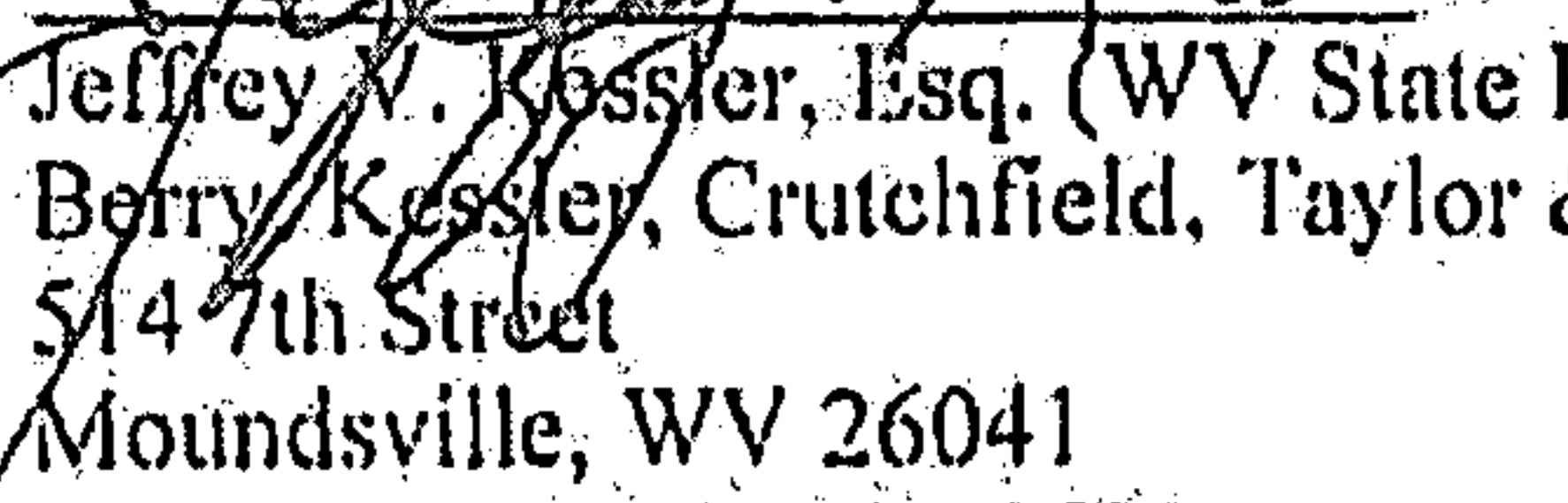
(a) copies of all pleadings, affidavits, declarations, briefs, memoranda, expert reports, exhibits, and all other papers filed or served in this action; (b) transcripts of all testimony taken at any depositions, hearings, or trial (with exhibits); (c) all of its own work product generated in connection with this action; and (d) one set of Confidential Material for regulatory or administrative purposes, subject to maintaining the confidentiality of all retained material pursuant to this Order.

22. This Protective Order shall not affect the rights or obligations of the parties with respect to matters not specifically addressed in this Protective Order. The provisions of this Protective Order shall remain in full force and effect following the conclusion of this action unless waived by the written consent of the party that designated material as Confidential Material under the terms of this Protective Order. This Court shall retain jurisdiction over the parties and recipients of any Confidential Material for enforcement of the provisions of this Protective Order following termination of this action.

23. Nothing in this Protective Order shall prejudice the right of any party to seek, at any time, a further modification of this agreement.

24. This Stipulation can be executed in counterparts.

Dated: February 5, 2020

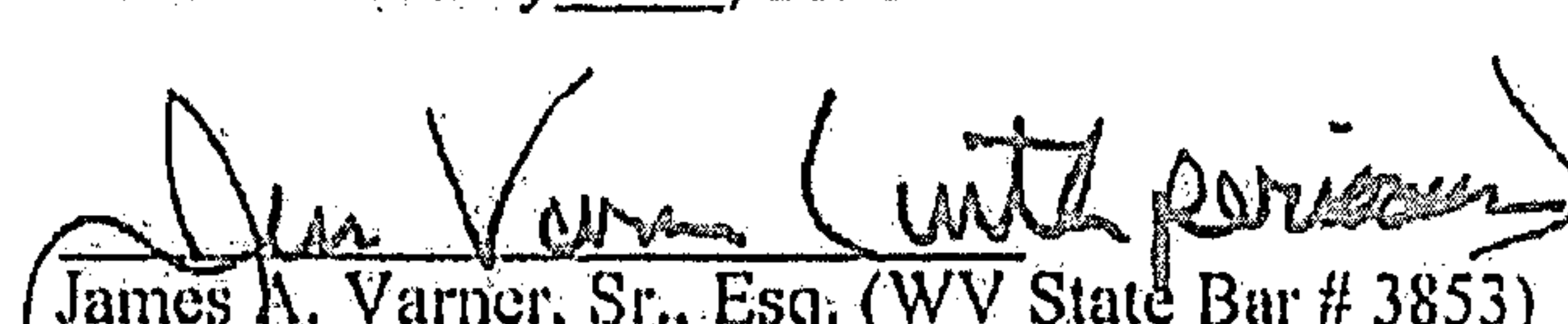

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Underwriting Services, Inc.; and HDI-Gerling
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IT IS SO ORDERED this 6 day of February, 2020.


The Honorable Christopher C. Wilkes