

their clients in connection with the downstream depositions, the criminal investigations, and the Foam litigation, they require access to material produced in this litigation that has been or may be designated “Confidential” or “Highly Confidential” under paragraph 1 of the Protective Order dated November 22, 2005 in this litigation. Under the current terms of the Protective Order, however, protected material produced in this litigation can only be used in this litigation. Separate Counsel and Individual Separate Counsel representing Direct Action Plaintiffs and witnesses in the criminal investigation and Foam Litigation therefore are concerned that absent a modification of the Protective Order, they might face assertions of improper use in connection with the criminal investigations and the Foam Litigation to the extent Confidential or Highly Confidential materials are disclosed to them.

This amendment is intended to modify paragraphs 1(f), 3, 4(b), 5(b) and 10 of the referenced Protective Order to permit Separate Counsel and Individual Separate Counsel access to the Confidential and Highly Confidential material produced in this litigation, as described and limited above, and to permit such counsel to use information learned or derived from that material not only for purposes of this litigation, but also in connection with the representation of their clients in the criminal investigations and the Foam Litigation. Provided, however, no documents designated “Confidential” or “Highly Confidential” in this litigation, including deposition transcripts, shall be produced in response to any discovery request or other legal process or submitted in the criminal investigations or the Foam litigation absent consent of the designating party or further Order of this Court.

Separate Counsel or Individual Separate Counsel will be provided access only after they have acknowledged their agreement to be bound by the November 22, 2005 Protective Order, as amended hereby, by signing the Certification attached hereto as Exhibit A.

This order is binding on all parties to this action and all non-parties who have requested the protection of this Order by signing the attached Exhibit A, and this Order shall remain in force and effect until modified, superseded or terminated by consent of the parties or by further Order of the Court.

IT IS SO ORDERED.

Dated October 21, 2011, at Kansas City, Kansas.

s/ James P. O'Hara
James P. O'Hara
U.S. Magistrate Judge