

applicable to documents and certain discovery responses as defined by Rule 1.350 of Florida Rules

2. This Confidential Agreement and Protective Order (hereinafter "Agreement") shall be

research, development, or commercial information.

other information believed in good faith by the designating party to be proprietary or confidential

1. Each party may designate as CONFIDENTIAL INFORMATION any trade secret or

**ORDERED AND ADJUDGED:**

reviewed the court file, and otherwise being fully-advised in the premises, it is hereby

THIS CAUSE came before this Court upon stipulation of the parties and the Court having

**CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER  
FOR DOCUMENTS PRODUCED BY MICHELIN NORTH AMERICA, INC.**

Defendants.

MICHELIN NORTH AMERICA, INC., a  
Foreign Corporation, and/or MICHELIN  
AMERICAS RESEARCH &  
DEVELOPMENT CORPORATION, a Foreign  
Corporation, MICHELIN NORTH AMERICA  
(CANADA), INC., a Foreign Corporation,  
ROMAN VAN LINES, INC., a Florida  
Corporation, and CRAWFORD TIRE  
SERVICE, INC., a Florida Corporation,

v.

Plaintiff,

NEISHELL LORRAINE, as Personal  
Representative of the Estate of ROBERT  
LORRAINE, Deceased,

CASE NO.: 07-CA-10909

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

of Civil Procedure (Fla. R. Civ. P.) and deposition testimony to be produced in this lawsuit titled *Lorraine et al. v. Michelin North America, Inc. et al.; pending in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida; Case No. 07-CA-10909* (hereinafter referred to as the "Lawsuit"), and any other material or information hereafter furnished by or on behalf of any party or any person associated with any party in connection with this Lawsuit, that produces documents, information, or testimony (including by deposition or at trial), which contains or is designated as CONFIDENTIAL INFORMATION in accordance with the procedures set forth herein.

3. For purposes of this Order, CONFIDENTIAL INFORMATION may include or be included in any document, physical object, tangible thing or the factual knowledge of persons, such as by way of example and not by limitation, recorded statements of counsel, transcripts, pleadings, motions, briefs, answers to interrogatories and other responses to discovery requests, drawings, compositions, devices company records and reports, summaries, notes, abstracts and any other instrument which contains CONFIDENTIAL INFORMATION.

4. Any information or documents produced at any time, either voluntarily or pursuant to order, orally or in writing in this litigation, which is asserted by any party to contain or constitute CONFIDENTIAL INFORMATION shall be so designated by that party in writing as follows:

A. Documents and things shall be clearly and prominently marked on their face with the legend: CONFIDENTIAL INFORMATION in an area that does not impede the visibility of the content of the document produced; and

B. If such CONFIDENTIAL INFORMATION is contained or given in any deposition testimony, trial testimony or any other testimony, the transcript may be designated as containing CONFIDENTIAL INFORMATION in accordance with this Agreement by notifying the parties on the record at the time the testimony is given, or in writing within thirty (30) days of receipt of the transcript by specifying the specific pages and lines of the transcript which, based on a good faith determination that any portions so designated contain CONFIDENTIAL INFORMATION as defined herein. To the extent possible, any portions so designated shall be transcribed separately and

marked by the court reporter as CONFIDENTIAL INFORMATION. Until expiration of the above thirty (30) day period, all deposition transcripts and information therein will be deemed CONFIDENTIAL INFORMATION.

C. By designating a document CONFIDENTIAL INFORMATION pursuant to this document, a party represents that it has made a bona fide, good faith determination that the document does, in fact, contain CONFIDENTIAL INFORMATION as defined herein.

D. Should any party produce a copy of an original document in its possession and designate that document as one containing CONFIDENTIAL INFORMATION in accordance with the procedure set forth in paragraph 3(A), (B) and (C) above, the producing party shall be deemed to have agreed that the document is an authentic copy of the original, pursuant to Rule 90.901 of the Florida Evidence Code. If redactions are made, the document shall be deemed to be an authentic copy of the original minus the redactions.

5. CONFIDENTIAL INFORMATION and the portion of all writings, including the portion of pre-trial court papers, that quote from, summarize, or comment upon such materials shall be treated as confidential under this order.

6. The restrictions upon, and obligations accruing to, persons who become subject to this Agreement shall not apply to any information produced in accordance with this Agreement as to which this Court or another court having jurisdiction over the production of information for this matter rules, after proper notice and hearing, that such information is not CONFIDENTIAL INFORMATION as defined in Paragraph 1 hereof.

7. All CONFIDENTIAL INFORMATION filed with the Court, including all depositions, or any portion or portions of depositions which contain(s) CONFIDENTIAL INFORMATION, and all papers (including affidavits and memoranda of law) purporting to reflect CONFIDENTIAL INFORMATION shall be filed under seal, in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this Lawsuit, an identification of the contents of such sealed envelope or container, and the legend: "FILED UNDER SEAL PURSUANT TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER."

disseminated or disclosed only to the following persons:

- A. The Court, its staff, witnesses and the jury in this Lawsuit or any other court having jurisdiction over discovery procedures in this Lawsuit;
- B. A deponent in this Lawsuit, during the course of his or her examination, who is a current or former employee of any of the parties, or is an author, addressee, or other recipient of such material;
- C. All attorneys of record for the parties in this Lawsuit retained in or working on the prosecution, defense, appeal or settlement of this Lawsuit, and the employees of such counsel assigned to assist them, and any other attorney or their employees associated to assist in the preparation of this Lawsuit for trial;
- D. The parties or their employees in this Lawsuit;
- E. Any experts or consultants used or retained by counsel for the preparation or trial of this Lawsuit to aid in the prosecution, defense, appeal or settlement of this Lawsuit. Prior to receiving any information designated CONFIDENTIAL INFORMATION, any such expert must first be shown a copy of this Order and must sign a declaration in the form of Exhibit "A." Such declaration shall be retained by counsel for the receiving party. A list of persons and materials provided to those persons will be disclosed to the producing party at the ultimate and final outcome of the case;
- F. Such other persons in this Lawsuit as may be subsequently designated either by written agreement of the parties after a request by one of them, or by order of the Court upon motion of either party, after notice to the opposing party;
- G. Translators retained by the parties for the preparation or trial of the instant case;
- H. Attorneys representing the parties, and the experts and consultants retained by those parties, in other cases against Michelin North America ("MNA") or Michelin Americas Research & Development ("MARCO") involving claims that any Michelin tire or tires which are "common green" to those tires sustained a tread/belt separation/detachment, in which the standards for the discovery of trade secrets and other confidential information are met, provided that no disclosure shall be made to an expert or consultant who is employed by a competitor of MNA or MARCO. Attorneys for MNA or MARCO shall be given at least 15 days advanced notice of any proposed dissemination of confidential material under this paragraph. If MNA or MARCO objects to the sharing, a written notice shall be served upon counsel for plaintiff notifying plaintiff of the objection and the specifics of that

objection, and the parties shall confer in an attempt to resolve the objection before the date of the proposed dissemination. If the objection cannot be resolved, MNA or MARC shall file a motion within the 15 day period (or longer if agreed to in writing by the parties) seeking a court ruling on the issue. Upon service of the objection, no dissemination shall take place until the objection is resolved or the matter has been decided by the court and any appeals of the ruling completed.

9. Before being given access to CONFIDENTIAL INFORMATION, each person described in paragraphs 8(B), (D), (E), (F), (G) or (H) shall be advised of the terms of this Order, and shall agree in writing to be bound by its terms and to submit to the jurisdiction of this Court, pursuant to execution of Exhibit "A" to this Order.

10. Attendance at a deposition at which CONFIDENTIAL INFORMATION is disclosed or discussed shall be limited to persons authorized to receive such information pursuant to the provisions of Paragraph 8, except for court reporters, videographers and/or interpreters. The presence of court reporters, videographers and/or interpreters does not waive any of the terms of this Agreement.

11. All CONFIDENTIAL INFORMATION produced in accordance with the provisions of this Agreement shall be used by the recipient solely for purposes of this Lawsuit or other persons described in Paragraph 8 above. Use for purposes of this Lawsuit by the recipient shall mean use only in prosecuting or defending this Action, in testimony and exhibits at the trial and appeal of this Lawsuit, or in connection with motions, depositions or witness preparation subject to the restrictions of this Agreement, but such use shall not include, *inter alia*, use for or in connection with any commercial activity, including but not limited to research, development, manufacture, sale, or marketing of any product (including without limitation software), process, or service, or for purposes of publicity, or in any other legal proceeding.

12. If the Court orders that access to or dissemination of information submitted as CONFIDENTIAL INFORMATION shall be made to persons other than those identified in

Paragraph 8 above, such CONFIDENTIAL INFORMATION shall only be accessible to, or

disseminated to, such persons based upon the conditions pertaining to, and obligations arising from

this Agreement, and such persons shall be considered subject to this Agreement, unless the Court

orders that the information is not CONFIDENTIAL INFORMATION as defined in Paragraph 1

hereof.

13. If a party to this Agreement who is to receive or receives any CONFIDENTIAL

INFORMATION in accordance with this Agreement disagrees with respect to its designation as

CONFIDENTIAL INFORMATION, in full or in part, such receiving party shall notify the

designating party in writing within 45 days of the designating party's service of those documents,

and the recipient and the designating party shall thereupon confer as to the status of the subject

information proffered within the context of this Agreement. If the recipient and the producing party

are unable to agree upon the status of the subject information within ten (10) days of the initial

notice of dispute, any party to this agreement may challenge the propriety of such designation by a

motion to the Court, which shall decide the issue. The Court may raise the issue of designation of

information as confidential without any request from a party. All materials will be filed under seal,

in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title of this

Lawsuit, until the Court has decided on the propriety of such designation. The parties may move for

an *in camera* inspection in lieu of filing the documents under seal.

14. Plaintiff's Counsel in this litigation shall return all copies of CONFIDENTIAL

INFORMATION at the end of this litigation. Any party that receives copies of CONFIDENTIAL

INFORMATION pursuant to the sharing provision of Paragraph 8(H) above shall return all copies of

CONFIDENTIAL INFORMATION at the end of the litigation qualified under Paragraph 8(H) of

this order.

15. A party may produce for inspection documents or things containing

CONFIDENTIAL INFORMATION that are inadvertently not marked or designated in accordance with Paragraph 4 above. A party may, within thirty (30) days of disclosure, mark or designate such documents or copies of those documents containing CONFIDENTIAL INFORMATION in accordance with Paragraph 4.

16. Nothing in this Agreement shall be deemed a waiver of any right any party otherwise might have under the Freedom of Information Act, the Florida Statutes, or the doctrines of attorney-client privilege or attorney work product.

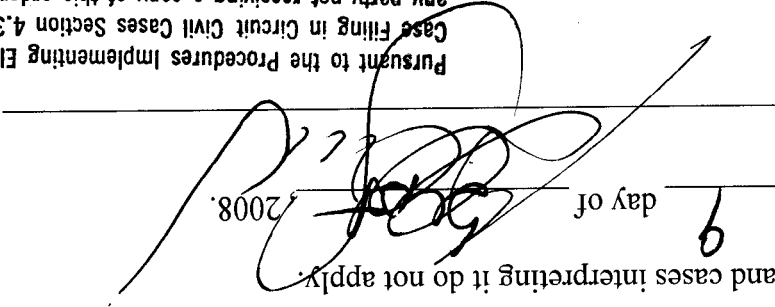
17. This Court shall retain jurisdiction of all matters pertaining to this Agreement, and all parties to this case are deemed to submit to the jurisdiction of this Court for matters relating to the enforcement of this Agreement. This Agreement shall survive the final conclusion of this Lawsuit and continue in full force and effect, and the Court shall retain jurisdiction to enforce this Agreement.

18. This Agreement shall be governed and construed in accordance with the law of the State of Florida.

19. Nothing in this Order is intended to prevent any party from raising with the Court any concern that the non-disclosure of certain CONFIDENTIAL INFORMATION may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office. Nothing in this Order is intended to prevent Defendant from arguing

that section 69.081, Florida Statutes, and cases interpreting it do not apply.

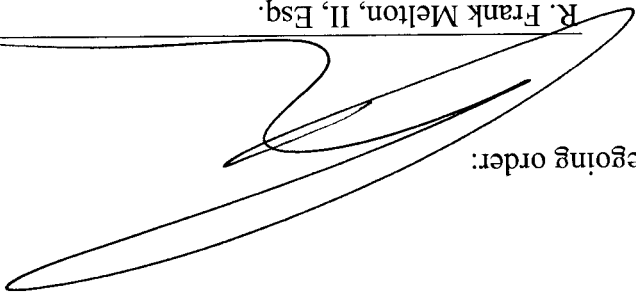
DONE AND ORDERED this 9 day of \_\_\_\_\_, 2008.



Conformed copies to:  
all counsel of record

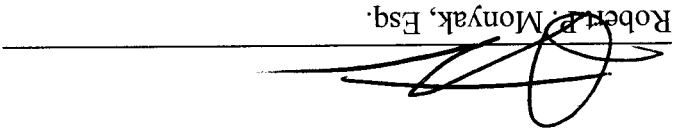
Pursuant to the Procedures Implementing Electronic Case Filing in Circuit Civil Cases Section 4.3, any party not receiving a copy of this order by ECF must be provided a paper copy of this document and a copy of the Notice of Electronic Filing by the filer. Paper copies will not be provided by the Court.

We consent to the within and foregoing order:



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C. Richard Newsome, Esq.  
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*Attorneys for Michelin North America, Inc.*

I hereby acknowledge and affirm that I have read the terms and conditions of the Agreed Protective Order entered in *Lorraine et al. v. Michelin North America, Inc. et al.*; pending in the Circuit Court of the 9th Judicial Circuit in and for Orange County, Florida; Case No. 07-CA-1090. I understand the terms of the Order and under oath consent to be bound by the terms of the Order as a condition to being provided access to Confidential Documents or information derived from therefrom. Further by executing this Written Assurance, I hereby consent to the jurisdiction of the above-captioned Court for the special and a limited purpose of enforcing the terms of the Agreed Protective Order. I also agree, pursuant to the terms of the Order to return all Confidential

**EXHIBIT "A" TO CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER  
WRITTEN ASSURANCE AND CONSENT TO BE BOUND**

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Defendants.

MICHELIN NORTH AMERICA, INC., a  
Foreign Corporation, and/or MICHELIN  
AMERICAS RESEARCH &  
DEVELOPMENT CORPORATION, a  
Foreign Corporation, MICHELIN NORTH  
AMERICA (CANADA), INC., a Foreign  
Corporation, ROMAN VAN LINES, INC., a  
Florida Corporation, and CRAWFORD TIRE  
SERVICE, INC., a Florida Corporation,

VS.

Plaintiff,

NEISHELL LORRAINE, as Personal  
Representative of the Estate of ROBERT  
LORRAINE, Deceased,

CASE NO.: 07-CA-10909

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA

Documents, including copies thereof, to Plaintiffs' counsel or Defendants' counsel, at the conclusion

of this litigation so they may be returned to the party that produced them.

I recognize that all civil remedies for breach of this Written Assurance are specifically

reserved by the parties to the litigation and are not waived by the disclosure provided for herein.

Further, in the event of the breach of the Written Assurance, I recognize that parties to this litigation

may pursue all civil remedies available to them as third-party beneficiaries of the Written Assurance.

Dated: \_\_\_\_\_

Signature

Printed Name

Firm

Address

City

State, Zip Code

Telephone Number

Case Name

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

Notary Public

State

My commission expires: