DOCKETED
COMPLEX LIT CENTER
DEC 1 5 2008

J. STEWART

IN RE	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY
ASBESTOS LITIGATION	:	OCTOBER TERM, 1986 NO. 0001

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)
DEC 1 5 2008
FIRST JUDICIAL DISTRICT OF PA
USER I.D.:

STIPULATION AND PROTECTIVE ORDER

WHEREAS, during the course of the Action (as hereafter defined), the parties or others may be required to produce in discovery information which a party or the person or entity from whom discovery is sought considers to be confidential business information, confidential technical information, and other information subject to privacy protection under applicable constitutional and statutory law, confidential information pertaining to the financial affairs of the parties and the method by which the parties conduct their business, trade secrets, proprietary or other confidential information; and

WHEREAS, the parties hereto desire to agree to a protective order for the protection of specified information and documents during the pendency of this action and thereafter, and also for resolution of other issues which have or may arise in connection with this Action;

THEREFORE, IT IS ORDERED that:

1. **Terms:** The terms defined in this Paragraph shall have the meanings provided. Defined terms may be used in the singular or plural.

1.1 **"Producing Party"** means the party, or person/entity other than a party, being asked to produce documents or information considered by that party or person to be Confidential Information, or a party asserting a confidentiality interest in information produced by others.

1.2 **"Receiving Party"** means that party/person/entity receiving or requesting production of Confidential Information.

1.3 **"Confidential Information"** means information, whether or not embodied in any physical medium, including all originals and copies of any document and/or information, used by the Producing Party in or pertaining to its business, or information pertaining to third-party privacy interests, which information the Producing Party reasonably and in good faith judgment believes contains or discloses confidential, non-public, proprietary and/or sensitive information including, but not limited to:

(a) financial data and information reflecting non-public business or financial strategies;

(b) technical information, such trade secrets or other confidential, research and development information, product specifications, proprietary or nonpublic commercial information;

(c) compensation information;

(d) any other information involving privacy interest and commercially and/or competitively sensitive information of nonpublic nature, or received on a confidential basis.

1.4 **"Litigation Documents"** means all pleadings, motions, affidavits and related papers, all documents produced or exchanged in the course of this action or any settlement negotiations, all written discovery responses and all transcripts and testimony given in depositions, in hearings or at trial.

1.5 **"Discovery Materials"** means all products of discovery and all information derived therefrom, including, but not limited to, all documents, objects or things, deposition

testimony and interrogatory/request for admission responses, and any copies, excerpts or summaries thereof, obtained by any party pursuant to the requirements of any court order, requests for production of documents, requests for admissions, interrogatories or subpoena.

1.6 **"Termination"** means the dismissal of this Action, or entry of final judgment or expiration of all periods to appeal or seek judicial review of this Action.

1.7 **"Action"** means the pretrial proceedings and trial or settlement of In Re Asbestos Litigation, Phila. CCP, October Term 1986, No. 0001, including any and all suits filed by Shein Law Center, Ltd. on behalf of individual asbestos plaintiffs where the defendants include David Moser and/or DFT, Inc.

2. **Use of Confidential Information**

2.1 All documents and information designated in good faith by a party to the Action as Confidential Information shall be used solely for the purposes of this Action and shall not be used for any other purpose, including, without limitation, any business or commercial purpose, product development, intellectual property development, or in any other legal proceeding, action or matter and shall not, directly or indirectly, in whole or in part, be revealed or disclosed, or made available for inspection or copying to persons other than "qualified persons" as defined in paragraph 2.2.

2.2 "Qualified Person" for Confidential Information means:

(a) counsel for Plaintiffs and DFT Inc. and David W. Moser in this Action, including office associates, paralegals, and stenographic and clerical employees;

(b) any court reporter or typist recording or transcribing testimony in this Action and any outside independent reproduction firm;

(c) David W. Moser and persons noticed for depositions in the Action who are current or former employees of DFT Inc.; and

(d) experts retained by Plaintiffs, DFT Inc. or David W. Moser in connection with this Action who have signed the Confidentiality Agreement that is set forth in Attachment "A".

2.3 In the event that any of the foregoing persons ceases to be engaged in the preparation of this Action, access by such person(s) to discovery material designated as Confidential shall be terminated. Any such material in the possession of any such person(s) shall be returned or destroyed. The provisions of this Order shall remain in full force and effect as to all such person(s) as to all such material and the obligations not to disclose any portions of such material, except as may be specifically ordered by the Court.

3. **Redaction of Documents**

3.1 Notwithstanding the provisions of Paragraph 2 above, the Producing Party may redact from any materials containing Confidential Information any information that is privileged or would infringe on privacy rights (e.g., disclosure of social security and other confidential identification information). If a document has been withheld or redacted in whole or in part, the Producing Party agrees to provide a log that explains the basis for withholding or redacting the document.

3.2 If there is a dispute whether any redacted material qualifies for redaction under this paragraph, counsel may move for ruling, which may require this Court's *in camera* inspection of a document on the issue of whether certain information is entitled to redaction.

4. **Designation of Confidential Information**

4.1 **Documents.** Any Producing Party may, in good faith, designate Confidential Information contained in a document or thing specifically by either marking the document or thing as "CONFIDENTIAL" or by designation, in writing, identifying the Bates stamp number which has been assigned to the document or thing.

4.2 **Depositions.** Any Producing Party may, in good faith, designate information or documents disclosed during deposition as Confidential Information by indicating on the record at the deposition that the entire deposition testimony, or any specified part of the testimony given or to be given, and/or all or any part of the document or thing marked for identification at such deposition is Confidential Information subject to the provisions of this Stipulated Protective Order. Within thirty (30) days after receipt of a deposition transcript, any Producing Party may specifically designate information not previously designated as confidential as Confidential Information, by notifying all parties in writing of any specific pages and lines of the transcript which contain the Confidential Information. Each party shall attach a copy of such written statement to the face of the transcript and each copy thereof in its possession, custody or control.

4.3 **Interrogatories.** Any party may, in good faith, designate Confidential Information contained in response to an interrogatory by designating the responses Confidential, or the Receiving Party otherwise shall be advised in writing of such confidential status, and the information may be served and filed in a separate document if desired.

5. **Mistake or Inadvertence.** Notwithstanding the procedure set forth in paragraph 4, above, documents or other discovery materials produced and not designated as CONFIDENTIAL through mistake or inadvertence shall likewise be deemed confidential upon notice of such mistake or inadvertence. Moreover, where a Producing Party has inadvertently

produced a document which the Producing Party later claims should not have been produced because of privilege, the Producing Party may require the return of any such document within 10 days of discovering that it was inadvertently produced (or inadvertently produced without redacting the privileged content). A request for the return of any document shall identify the document by Bates number and the basis for asserting that the specific document (or portions thereof) is subject to the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity from discovery, the basis for asserting that the production was inadvertent, and the date of discovery that there had been an inadvertent production. The inadvertent production of any document which a Producing Party later claims should not have been produced because of a privilege will not be deemed to be a waiver of any privilege to which the Producing Party would have been entitled had the privileged document not inadvertently been produced. If a Producing Party requests the return, pursuant to this paragraph, of any such document from another party, the party to whom the request is made shall within 10 days return to the requesting party all copies of the document within its possession, custody, or control - including all copies in the possession of experts, consultants or others to whom the document was provided. In the event that only portions of the document contain privileged subject matter, the Producing Party shall substitute a redacted version of the document at the time of making the request for the return of the requested document. In the event the Receiving Party contests the claim of privilege or inadvertent production, the Receiving Party shall file a motion within 10 days after the return of the document to obtain a court determination that the document is not privileged.

6. **Challenge of Designation.** The Receiving Party shall not be obligated to challenge the propriety of the Confidential Information designation at the time made or upon a submission to

the Court. In the event a party disagrees at any stage of these proceedings with the Producing Party's designation of Confidential Information, the parties shall first try to dispose of such dispute in good faith on an informal basis. If a dispute cannot be informally resolved, the Receiving Party may seek appropriate relief from this Court, and the Producing Party shall have the burden of proving that the information is entitled to confidentiality protection. The Confidential Information shall remain Confidential and under the status given to it by the designating party unless and until the Ccourt rules to the contrary.

7. **Court Filings.** All Litigation Documents filed with the Court and designated by either party as containing Confidential Information shall be filed in a sealed envelope (or other appropriately sealed container) which shall be endorsed with the title of this action, an indication of the nature of the contents of such sealed envelope or container and the phrase "CONFIDENTIAL INFORMATION PURSUANT TO PROTECTIVE ORDER. NOT TO BE OPENED OR THE CONTENTS REVEALED EXCEPT (1) TO THE COURT OR (2) BY ORDER OF THE COURT."

8. **Subpoena by The Courts or Agencies.** If another person, entity, court or an administrative agency subpoenas or orders production of Confidential Documents that the parties have obtained under the terms of this Order, the parties shall immediately (and specifically prior to any production) notify counsel for the Producing Party of the pendency of such subpoena or order. The Party to whom the subpoena is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such document or information until twenty (20) days after giving counsel for the Producing Party notice in writing of the subpoena, accompanied by a copy of the subpoena. If the Producing Party objects to the subpoena, the Producing Party shall so advise the Party to whom the subpoena is directed and shall file an appropriate motion,

and the Party to whom the subpoena is directed agrees not to produce Documents in response to it until the resolution of the objection by the appropriate court or until ordered by the court to do so.

9. **Client Consultations.** Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Documents.

10. **Use.** Persons obtaining access to Confidential Documents under this Order shall use the information only for preparation and trial of this case, and shall not use such information for any other purpose, including business, governmental, commercial, administrative, legal or judicial proceedings. All objections as to admissibility into evidence of the discovery material subject to this Order are reserved until trial of this case. The use of Confidential Information as evidence at the trial of this case shall be subject to an order of the Court as may, at the time, be reasonably necessary to preserve the confidentiality of the material involved.

11. **Non-Termination.** The provisions of this Order shall not terminate at the conclusion of this action. This Order shall remain in full force and effect and each person subject to this Order shall continue to be subject to the jurisdiction of this Court for the purposes of enforcement of the confidentiality terms of this Order. Within 120 days after final conclusion of all aspects of this lawsuit, Confidential Documents and all copies of same (other than exhibits of record) shall be returned to the Producing Party, at its cost or at the option of the Producing Party destroyed. All counsel shall make certification of compliance herewith and shall deliver the same to counsel for the Producing Party not more than 150 days after final conclusion of this litigation.

12. **Modification Permitted.** Nothing in this Order shall prevent a party from seeking modification of this Order or from objecting to discovery that it believes otherwise to be improper.

13. **Responsibility of Attorneys.** The attorneys are responsible for employing reasonable measures, consistent with this Order, to control duplication of, access to, and distribution of copies of Confidential Documents. Parties shall not duplicate any Confidential Document except working copies and for filing in court under seal. All copies made of Confidential Documents shall bear the appropriate confidential designation.

14. **No Waiver.**

14.1 Review of the Confidential Information by counsel, experts, or consultants for litigants in the lawsuit shall not waive the confidentiality of the documents or objections to production.

14.2 The inadvertent, unintentional, or *in camera* disclosure of Confidential Documents and information shall not, under any circumstances, be deemed a waiver in whole or in part, of any party's claims of confidentiality.

14.3 Nothing contained in this Protective Order shall constitute a waiver of, or otherwise prejudice, the Producing Party's right to protect from disclosure any information based on any applicable privilege, right of privacy, trade secret protection or other statutory common law immunity.

15. Nothing contained in this Protective Order and no action taken pursuant to it shall prejudice the right of any party to contest the alleged confidentiality, relevancy, admissibility, or discoverability of the Confidential Documents and information sought.

16. The terms of this Protective Order shall survive and remain in effect after the termination of this and any related lawsuit.

17. **Governing Law.** Pennsylvania law shall govern the Stipulation and Protective Order.

18. **Jurisdiction Over Agreement.** The Philadelphia Court of Common Pleas shall have jurisdiction to enforce the provisions of the Stipulation and Protective Order beyond the conclusion of this Agreement.

IT IS SO STIPULATED.

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Attorney for Defendants DFT Inc. and David W. Moser
Dated: November 26, 2008

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Attorney for Plaintiffs
Dated: November 26, 2008

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: Dec 10th, 2008

J.

ATTACHMENT A

AGREEMENT TO MAINTAIN CONFIDENTIALITY

I, _____ [Name - Print or Type], have been given and read a copy of Protective Order, dated_____, in this case. I understand and will strictly adhere to the contents of said order. I understand that produced material disclosed to me is subject to the order of this Court and that I am prohibited from copying, disclosing or otherwise using such material except as provided by said court order. I understand that unauthorized disclosure of the stamped confidential documents may constitute contempt of court and agree to be subject to personal jurisdiction of this Court for the purpose of enforcing my obligations under this Agreement, the order, and any contempt proceeding that may be instituted for alleged violation thereto. I understand also that my execution of this Agreement to maintain confidentiality, indicating my agreement to be bound by said order, is prerequisite to my review of any produced document and materials.

_____
[Date]

_____
[Name]