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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

THE PHOENIX INSURANCE  
COMPANY, a foreign insurance  
company;

Plaintiff,

v.

DIAMOND PLASTICS  
CORPORATION, a Nevada corporation;  
H.D. FOWLER COMPANY, a  
corporation;

Defendants.

CASE NO. 2:19-cv-01983

**DECLARATION OF MARK CROOM  
IN SUPPORT OF THE PHOENIX  
INSURANCE COMPANY’S MOTION  
TO STRIKE (RULE 12 (f)) CERTAIN  
MATTERS IN COUNTERCLAIM BY  
DIAMOND PLASTICS  
CORPORATION**

Noted for Motion Calendar:  
March 20, 2020

Oral Argument Requested

Complaint Filed: Dec. 4, 2019

I, Mark Croom, hereby declare as follows:

1. I am an adjuster for construction claims in the western region for The Travelers Indemnity Company (“Travelers”). The Phoenix Insurance Company is a subsidiary wholly owned by The Travelers Indemnity Company.

1           2.     I have personal knowledge of the following facts and if called as a  
2 witness could and would competently testify thereto.

3           3.     In order to avoid comingling different functions, Travelers generally  
4 sets up two separate claim files when third-party claims are tendered to Travelers in  
5 Washington. One file is set up regarding whether coverage for the claim exists, and  
6 a separate file is set up for the defense of the claim. Separate adjusters are assigned  
7 to handle each function.

8           4.     Travelers employs in-house attorneys designated as the Claims Legal  
9 Group. Those attorneys are available to consult with adjusters on legal issues  
10 relevant to pending claims. The attorneys that are part of the Claims Legal Group  
11 do not adjust claims or take part in the quasi-judiciary tasks of investigating,  
12 evaluating or processing existing claims. Rather, the attorneys with the Claims  
13 Legal Group provide Travelers and its subsidiaries with counsel as to their own  
14 potential liability, including whether or not coverage exists under the law.

15          5.     I have been directed by Travelers to designate claim notes that reference  
16 confidential communications with attorneys with Claims Legal Group as  
17 “SENSITIVE” and to notate that the exchange is “Attorney Client Privileged.”

18          6.     I further have been advised by Travelers to keep attorney-client  
19 privileged notations in claim notes confidential and not to disclose them to anyone  
20 outside the company other than coverage counsel absent a court order. I was further  
21 instructed that when disclosing claim notes that contain entries designated as  
22 “SENSITIVE” or notated as “Attorney Client Privilege” to others, those entries  
23 should be redacted to avoid disclosing privileged materials.

24 ///

1           7.     I have never been an officer or director of Travelers or of The Phoenix  
2 Insurance Company. Moreover, I never was part of the management of Travelers or  
3 of The Phoenix Insurance Company. As such, I am not empowered to waive  
4 Phoenix's attorney-client privilege regarding communications between myself and  
5 members of the Claims Legal Group.

6           8.     In March 2019, The Phoenix Insurance Company opened a coverage  
7 claim file associated with the tender by Diamond Plastics of its defense in the case  
8 styled *H.D. Fowler Company v. Diamond Plastics Corporation*, King County  
9 Superior Court case No. 19-2-08572-0 KNT. That case was given claim No.  
10 FEQ9090 and was assigned to me.

11          9.     A separate claim file was opened for the defense of Diamond Plastics  
12 in April 2019, was given claim No. ACQ7521, and was assigned to adjuster Brian  
13 Skinner.


14          10.    In April 2019, I consulted with Laura Hogan, an attorney with  
15 Travelers' Claims Legal Group. My consultation with Ms. Hogan was limited to  
16 providing The Phoenix Insurance Company with counsel as to its own potential  
17 liability, including whether or not coverage exists under the law. I made an entry  
18 in my claim notes regarding that communication, marking the note as "SENSITIVE"  
19 and notating the communication as "Attorney Client Privilege."

20          11.    Shortly after my communication with Ms. Hogan, I arranged for my  
21 claims file to be uploaded into claim file ACQ7521, the file assigned to Brian  
22 Skinner. Normally the materials uploaded would not include my claim notes,  
23 however it appears that my unredacted claim notes may inadvertently have been  
24 uploaded to claim No. ACQ7521.

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12. My expectation was that my communication with Laura Hogan would remain confidential as it was covered by the attorney-client privilege. I have therefore maintained the communication as confidential, not sharing it with anyone other than individuals within Travelers and outside coverage counsel for Travelers and Phoenix. It was never my intention to waive any privilege inherent in individual entries within the claim notes for claim No. FEQ9090, the coverage file associated with the tender by Diamond Plastics of its defense in the case styled *H.D. Fowler Company v. Diamond Plastics Corporation*, King County Superior Court case No. 19-2-08572-0 KNT.

I declare under penalty of perjury under the laws of the state of Washington and the United States of America that the foregoing is true and correct and that this declaration was executed this 22 day of February 2020 at SAN DIEGO, California.

  
\_\_\_\_\_  
Mark Croom