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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 BRIAN
SKINNER 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, Brian Skinner, 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.

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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 adjuster Mark Croom.

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 me.

13 10. In April 2019, Mr. Croom arranged for his file to be uploaded into my
14 file, claim No. FEQ9090. Normally the materials uploaded would not include the
15 coverage adjuster's claim notes, however it appears that Mr. Croom's unredacted
16 claim notes may inadvertently have been uploaded to claim No. ACQ7521.

17 11. In May 2019, Mark Croom advised me that he had retained the firm
18 Floyd, Pflueger & Ringer to defend Diamond Plastics in *H.D. Fowler Company v.*
19 *Diamond Plastics Corporation*, King County Superior Court case No. 19-2-08572-0
20 KNT. I therefore arranged for my file to be copied and sent to that firm. I did not
21 recognize before instituting that procedure that claims file No. ACQ7521 included
22 the unredacted claim notes for Mr. Croom's file and so did not remove those from
23 the production or redact attorney-client privileged notes.

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1 12. It was never my intention to waive any privilege inherent in individual
2 entries within the claim notes for claim No. FEQ9090, the coverage file associated
3 with the tender by Diamond Plastics of its defense in the case styled *H.D. Fowler*
4 *Company v. Diamond Plastics Corporation*, King County Superior Court case No.
5 19-2-08572-0 KNT.

6 I declare under penalty of perjury under the laws of the state of Washington
7 and the United States of America that the foregoing is true and correct and that this
8 declaration was executed this 21 day of February 2020 at Galt, California.

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12 Brian Skinner
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