

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PARKER-HANNIFIN CORPORATION,
and
CLARCOR INC.,

Defendants.

Civil Action No.: 1:17-cv-01354 (JEJ)

~~PROPOSED~~ **JOINT STIPULATED PROTECTIVE ORDER**

In the interests of (i) ensuring efficient and prompt resolution of this Action; (ii) facilitating discovery by the Parties litigating this Action; and (iii) protecting confidential information from improper disclosure or use, the Parties stipulate to the provisions set forth below. The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1), ORDERS as follows:

A. Definitions

1. As used herein:

(a) "Action" means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

(b) “Confidential Information” means any trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or any document, transcript, or other material containing such information that has not been published or otherwise made publicly available.

(c) “Disclosed” means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

(d) “Document” means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

(e) “Investigation” means the pre-Complaint inquiry into the matters at issue in this Action by the U.S. Department of Justice.

(f) “Investigation Materials” means non-privileged correspondence, documents, data, written information or statements, transcripts of testimony, declarations (including drafts), affidavits (including drafts), Civil Investigation Demands, informal requests for information, or other materials that (i) any non-Party provided to any Party, either voluntarily or under compulsory process, in the course of and relating to the Investigation; (ii) any Party provided to any non-Party in the course of and relating to the Investigation; or (iii) any Defendant, or affiliated person or entity, provided to Plaintiff, either voluntarily or under compulsory process, in the course of and relating to the Investigation.

(g) “Outside Counsel of Record” means the firm(s) of attorneys representing a Defendant in this proceeding.

(h) “Party” means the United States or any Defendant in this Action. “Parties” means collectively Plaintiff and Defendants in this Action.

(i) "Person" means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

(j) "Protected Person" means any Person (including a Party) that has produced documents, testimony, or other materials in this Action or the Investigation.

(k) "Transaction" means Parker-Hannifin Corporation's acquisition of CLARCOR Inc.

B. Notice to Non-Parties

2. Within five business days of the Court's entry of the scheduling order providing for the disclosure of Investigation Materials, each Party shall send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

3. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information, it may, within 14 days after receipt of a copy of this Order, seek additional protection from the Court for its Confidential Information. If a non-Party Protected Person seeks additional protection from the Court, the Investigation Materials for which additional protection has been sought will not be provided to other Persons until the Court has ruled.

C. Designation of Confidential Information

4. The following procedures govern the process for Protected Persons to designate as Confidential Information any information that they disclose in this Action after this Order is entered, including but not limited to information in response to requests under Fed. R. Civ. P. 30,

31, 33, 36 and 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45:

(a) Testimony. All transcripts of depositions taken in this Action after entry of this Order will be treated as Confidential Information in their entirety for 21 days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within five business days of receipt of the final transcript, the Party who noticed the deposition shall provide the final transcript to the deponent. Within 21 days following receipt of the final transcript, the deponent may designate as Confidential Information any portion of the deposition transcript, by page(s) and line(s), and any deposition exhibits provided by the deponent or the deponent's employer. To be effective, such designations must be provided in writing to Plaintiff's and Defendants' counsel listed at the end of this Order. Any portion of the transcript or exhibits not so designated pursuant to this subparagraph 4(a) shall not be treated as Confidential Information, despite any prior designation of confidentiality.

When a Party is entitled under this Order to question a deponent about a document or information that has been designated by a different Protected Person as Confidential Information, the Party that asked such questions shall designate as Confidential Information the portion of the transcript relating to such Confidential Information.

(b) Documents. Where a Protected Person produces after entry of this Order hard copies of documents or electronic version of documents that are not in a native format, such documents shall be designated by the Protected Person for protection under this Order by

stamping or otherwise marking each page containing Confidential Information with the designation “CONFIDENTIAL” in a manner that will not interfere with legibility or audibility.

(c) Electronic Documents and Data. Where a Protected Person produces electronic files and documents in native electronic format after entry of this Order, such electronic files and documents shall be designated by the Protected Person for protection under this Order by appending to the file names or designators information indicating whether the file contains Confidential Information, or by any other reasonable method for appropriately designating such information produced in electronic format, including by making such designations in reasonably accessible metadata associated with the files. Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the “CONFIDENTIAL” designation may be placed on the disk or other medium. When electronic files or documents in native form that have been designated as Confidential Information are printed for use at deposition, in a court proceeding, or for provision in printed form to any person described in subparagraph 10(g), the Party printing the electronic files or documents shall affix a legend to the printed document saying “CONFIDENTIAL” and include the production number and designation associated with the native file.

(d) Whenever discovery is sought from a non-Party in this Action, a copy of this Order shall accompany the discovery request or subpoena. Non-Parties may designate materials as Confidential Information pursuant to the procedures in this paragraph.

5. Other Procedures For Designation of Investigation Materials. Investigation Materials submitted by a Protected Person, or any other materials that are entitled to confidentiality under the Antitrust Civil Process Act, 15 U.S.C. S 1313 (c)(3), the Hart-Scott-

Rodino Antitrust Improvements Act, 15 U.S.C. S 18a(h), or any other federal or state statute, regulation, or precedent concerning documents in the possession of the Plaintiff, and any information taken from any portion of such document, shall be treated in the first instance as Confidential Information under this Order. Such material may be disclosed only in accordance with the procedures set forth in this Order. Any such materials produced by any Party in this Action will be marked with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility or audibility. Where Confidential Information is produced in electronic format on a disk or other medium that contains exclusively Confidential Information, the "CONFIDENTIAL" designation may be placed on the disk or other medium. The confidentiality of such materials may be later challenged under the provisions of Section C below.

6. Confidential Communications: The Parties acknowledge that any communications (written or oral) between them ("Party Communications") may include the disclosure of non-public information that constitutes Confidential Information within the meaning of this Order. All Party Communications shall be treated as CONFIDENTIAL pursuant to this Order, and may only be de-designated by the Parties' written agreement. However, nothing in this paragraph shall prohibit a Party from disclosing Party Communications to its representative(s), including in-house counsel, so long as such disclosure does not reveal or disclose information that the party representative is not otherwise entitled to receive under paragraph 10 of this Order. Further, nothing in this paragraph prohibits a Party from disclosing Party Communications with the written consent of the Parties or disclosing Party Communications to the Court as it or the law may require. The Parties acknowledge and agree that any disclosure of

Party Communications may subject the disclosing party or person to such sanctions as the Court deems necessary to address the violation, including but not limited to sanctions for contempt of this Order.

7. Any production of documents or testimony not designated as Confidential Information will not be deemed a waiver of any future claim of confidentiality concerning such information if it is later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated any documents, testimony, or other materials produced in this Action or in the Investigation as Confidential Information, it may so designate such documents, testimony, or other materials by notifying the Parties in writing. The Parties shall thereafter treat such documents, testimony, or other materials pursuant to the Protected Person's new designation under the terms of this Order. No prior disclosure of newly designated Confidential Information shall violate this Order. However, the disclosure of any information for which disclosure was proper when made will not be deemed improper regardless of any such subsequent confidentiality designation.

8. In the event of a disclosure of any Confidential Information to any person(s) not authorized to receive such disclosure under this Order, the Party responsible for having made such disclosure shall promptly notify the Protected Person whose material has been disclosed and provide to such Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party shall also promptly take all reasonable measures to retrieve the improperly disclosed material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made. Unauthorized or inadvertent disclosure shall

not change the confidential status of any disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

C. Challenges to Confidential Designation

9. Any Party who objects to any designation of confidentiality may at any time before the trial of this Action provide a written notice to the Protected Person who made such designation and all Parties stating with particularity the grounds for the objection. All materials objected to shall continue to be treated as Confidential Information pending resolution of the dispute. If the objecting Party and the Protected Person cannot reach agreement on the objection within five business days of the Party's written notice, the Protected Person may address the dispute to this Court. The Protected Person bears the burden of persuading the Court that the material is Confidential Information within the definition set forth in paragraph 1(b). The designated information shall be treated in accordance with its Confidential Information designation under this order until the Court rules on the designating Protected Person's timely filed motion. If the Protected Person fails to move the Court in accordance with this paragraph, or if the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation shall be considered rescinded. The Parties thereafter shall not be required to treat the information as Confidential Information under this Order. This order shall not preclude or prejudice either the Protected Person or the objecting Party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

D. Disclosure of Confidential Information

10. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for the Plaintiff and its attorneys, in-house economists, statisticians, paralegals and other professional personnel (including support and IT staff), and agents or independent contractors retained by the Plaintiff to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record for Defendants, including any attorneys, paralegals, and other professional personnel (including support and IT staff) that such outside counsel assigns to this Action whose functions require access to the information;

(d) outside vendors or service providers (such as copy-service providers, outside court reporters retained for depositions, and document-management consultants) retained by a Party to assist that Party in this Action provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto;

(e) any mediator, arbitrator, or special master that the Parties engage in this Action or that this Court appoints;

(f) persons who are authors, addressees, and recipients of the document, to the extent they have previously had lawful access to the document disclosed or to be disclosed; or persons for whom counsel for Plaintiff or Defendants believes in good faith previously received or had access to the document, unless the person indicates that he or she did not have access to the document;

(g) any person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or

independent contractors who assist the expert's work in this Action, provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto; and

(h) outside trial consultants (including, but not limited to, graphics consultants) provided that they shall first execute an Agreement Concerning Confidentiality in the form of Appendix A attached hereto.

11. Counsel for the Party making the disclosure must retain the original of the Agreement Concerning Confidentiality in the form of Appendix A attached hereto for a period of at least one year following the final resolution of this Action.

12. Each individual described in paragraph 10 of this Order to whom information designated as Confidential Information is disclosed must not disclose that Confidential Information to any other individual, except as provided in this Order.

13. Recipients of Confidential Information pursuant to this Order may use such material solely for the prosecution and defense of this Action and not for any business, commercial, personal, or competitive purpose or in any other litigation proceeding. Nothing contained in this Order, however, will affect or restrict the rights of any Party with respect to its own documents or information produced in this Action. Further, nothing contained in this Order prevents Plaintiff, subject to taking appropriate steps to preserve the confidentiality of such information, from disclosing such information designated as Confidential Information (i) in the course of any other legal proceeding in which the U.S. Department of Justice is a party; (ii) for the purpose of securing compliance with a Final Judgment in this Action; or (iii) for law enforcement purposes.

14. Nothing in this Order:

(a) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(b) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as Confidential Information;

(c) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in discovery in this Action; (iii) previously produced, disclosed and/or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to an order of a Court; or

(d) prevents Plaintiff's retention or use or disclosure of Investigation Materials outside the context of this Action to the extent permitted by applicable law or regulation governing such pre-complaint discovery including the Hart-Scott-Rodino Act, 15 U.S.C. § 18a, and the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14, or for law enforcement purposes, or as required by law, court order or regulation.

E. Use of Information Designated Confidential in This Action

15. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must obtain a Court order to file such Confidential Information under seal, in accordance with D. Del. LR 5.1.3. Nothing in this Order shall restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

16. If a Party includes trial exhibits on its exhibits list that contain or discuss information that it has designated as Confidential Information, at the time exhibit lists are exchanged, the Party shall also provide redacted versions of such exhibits. When the Parties exchange objections to exhibits, the Parties must also (i) provide redacted versions of any exhibits identified by the opposing Party that contain information the Party previously designated as Confidential Information; and (ii) exchange objections to redactions that were initially exchanged with the exhibit lists. Within three business days after exchanging redacted versions of the opposing Party's exhibit list, the Parties must exchange objections to these redactions. If a Party fails to provide redacted versions of an exhibit by the conclusion of this process, the exhibit shall be entered on the public record in its entirety.

F. Treatment of Confidential Information at Trial

17. The disclosure of Confidential Information at trial will be governed by a separate Court order. The parties agree to meet and confer concerning a proposal for such disclosures.

G. Procedures upon Termination of This Action

18. The obligations imposed by this Order survive the termination of this Action unless the Court, which shall retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise. Within 90 days after the expiration of the time for appeal of an order, judgment, or decree terminating this litigation, all persons having received information designated as Confidential Information must either make a good faith effort to return such material and all copies thereof to the Protected Person (or the Protected Person's counsel if represented by counsel) that produced it, or destroy or delete all such Confidential Information and certify that fact in writing to the Party or Protected Person. Counsel for the Parties will be entitled to retain

court papers, deposition and trial transcripts and exhibits, and work product, provided that the Parties and their counsel do not disclose the portions of court papers, deposition transcripts, exhibits, or work product containing information designated as Confidential Information to any person except pursuant to Court order or agreement with the Protected Person that produced the Confidential Information or as otherwise permitted herein. All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this paragraph. Nothing in this Paragraph, however, restricts the rights of the Parties under paragraphs 13 or 14 of this Order.

H. Right to Seek Modification

19. Nothing in this Order limits any Person, including members of the public, a Party or a Protected Person, from seeking further or additional protections of any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain material not be produced at all or is not admissible evidence in this Action or any other proceeding.

H. The Privacy Act

20. Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a(b)(11).

I. Persons Bound by This Order

21. This Order shall be binding on the Parties to this Action, their attorneys, and their successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions,

affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

Dated: November 9, 2017

AGREED TO BY:

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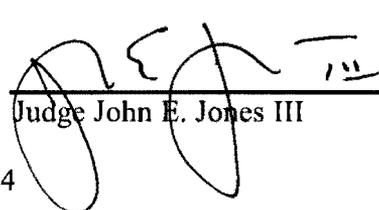
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Of Counsel

IT IS SO ORDERED.

11-29-17
Date



Judge John E. Jones III

APPENDIX A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,

Plaintiff,

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PARKER-HANNIFIN CORPORATION,

and

CLARCOR INC.,

Defendants.

Civil Action No.: 1:17-cv-01354 (JEJ)

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____ as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.
4. I submit to the jurisdiction of the United States District Court for the District of Delaware solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE