

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<p>ALLIANCE INDUSTRIES LIMITED and ALLIANCE INDUSTRIES FZC</p> <p style="text-align:center">v.</p> <p>A-1 SPECIALIZED SERVICES & SUPPLIES, INC.</p>	<p>CIVIL ACTION</p> <p>NO. 13-2510</p>
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Baylson, J.

April 30, 2014

MEMORANDUM OF REASONS FOR ADOPTION OF PROTECTIVE ORDER

Plaintiff proposed a Protective Order that would limit confidential material to counsel and witnesses, et al. in this case only. As noted in the Court's prior opinions, the English litigation is related but not necessarily "parallel." However, plaintiff is using the same law firm in this litigation and in the English litigation. Defendant has different counsel in the English litigation. The Court adopted defendant's proposed Protective Order allowing documents produced in this litigation to be provided to defendants' attorneys in England to achieve parity and equal access to confidential information.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALLIANCE INDUSTRIES LIMITED	:	
	:	
and	:	
	:	
ALLIANCE INDUSTRIES FZC,	:	
	:	
Plaintiffs,	:	Civil Action No. 13-2510
	:	
v.	:	
	:	
A-1 SPECIALIZED SERVICES & SUPPLIES, INC.	:	
	:	
Defendant.	:	

STIPULATION OF CONFIDENTIALITY AND PROTECTIVE ORDER

This Stipulation Of Confidentiality and Protective Order made by and between Plaintiffs Alliance Industries Limited and Alliance Industries FZC (collectively, “Plaintiffs”) and Defendant A-1 Specialized Services & Supplies, Inc. (“Defendant”), by and between their undersigned counsel, requests that the Court find that the following Order to protect the confidentiality of certain documents and other information which may be produced through discovery in the above-captioned action is entered in this case:

PROTECTIVE ORDER

This Order shall govern all products of discovery and all information derived therefrom, including, but not limited to, all documents, objects or things, deposition testimony, responses to interrogatories, requests for admission and/or subpoenas, and any copies, excerpts or summaries thereof, produced by any entity informally or pursuant to the requirements of any court order in the above-captioned matter (the “Litigation”). Together, the Plaintiffs and Defendant in this

Litigation, as well as their officers, directors, employees and agents (including without limitation their legal counsel), are hereinafter referred to as the “Parties.”

1. Protected Discovery Materials: For the purposes of designating and releasing documents under this Order, “Protected Discovery Materials” or “Protected Information” shall mean any discovery materials designated as “CONFIDENTIAL” that the producing Party in good faith believes are properly protected under Federal Rule of Civil Procedure 26(c)(1) and may include all non-public information or matter as described herein in Paragraph 5.

Notwithstanding the foregoing, Protected Discovery Materials shall not mean information or documents produced or disclosed that are or become, without violating this Order, and apart from the production or disclosure in connection with this Litigation, matters of public record or publicly available by law or otherwise.

2. Use of Protected Discovery Materials: Protected Discovery Materials will be used only for the litigation of this action and may also be shared with Attorneys representing the Parties in connection with the action pending in the High Court of Justice Chancery Division (London, England) (Master Bragge), captioned as *Suresh Khosla and A-1 Specialized Services & Supplies, Inc. v. Kumar Khosla, Alliance Industries Ltd., Alliance Industries FZC, and Vivek Gulatee*, No. HC13B01665 (the "English Action"). Before receiving Protected Discovery Materials, such Attorney must sign the Endorsement of the Protective Order attached as Exhibit A hereto. Nothing in this Protective Order shall preclude the parties (their members, affiliates, and shareholders) from seeking, through the normal discovery process, to obtain information in other matters.

3. Procedure Prior to Disclosure of Protected Discovery Materials: Prior to allowing access to Protected Discovery Materials, all persons receiving or given access to Protected

Discovery Materials in accordance with the terms of this Order shall (a) be provided a copy of this Order by the Party providing the Protected Discovery Materials; (b) be advised that Protected Discovery Materials may not be divulged other than as specifically provided herein; (c) be required to comply with the provisions of this Order after reading and agreeing to be bound by it; (d) consent to the continuing jurisdiction of the Court for the purposes of enforcing this Order and remedying any violations thereof, with the exception of outside counsel for a Party; and (e) be required to sign the Endorsement of Protective Order attached hereto as Exhibit A. Anyone who reviews or examines any Protected Discovery Material produced under this Order shall not only agree to be bound by this Order and sign Exhibit A, but also shall take steps reasonably necessary to prevent the disclosure of protected information. However, persons who come into contact with Protected Discovery Materials or related information for clerical or administrative purposes, and who do not retain copies, are not required to sign the Endorsement of Protective Order. Protected Discovery Materials will not be disclosed except in accordance with Paragraph 6.

4. **Designating Party:** The Party (or, if applicable, non-party) designating Discovery Material as “CONFIDENTIAL” shall be referred to for purposes of this Order as the “Designating Party.”

5. **Designation of “CONFIDENTIAL” Materials:** The designation “CONFIDENTIAL” shall be limited to information that any producing Party, including any third party, in good faith, believes to contain (a) proprietary or commercially sensitive information; (b) personal financial information; (c) information that should otherwise be subject to confidential treatment under Fed. R. Civ. P. 26(c)(1), as well as any information subject to confidentiality pursuant to statute; (d) current and past (to the extent they reflect on current) methods, procedures, and processes

relating to the extraction of precious metals; (e) current and past (to the extent they reflect on current) marketing plans and methods; (f) current and past (to the extent they reflect on current) business planning and financial information; (g) trade secrets; (h) past or current company personnel or employee information; (i) current and past research, development, production and manufacturing information; and (j) intellectual property. The designation “CONFIDENTIAL” does not include information or materials available to the public including, without limitation, catalogs, advertising materials, and the like.

6. Permissible Disclosure of “CONFIDENTIAL” Materials: Any Discovery Material designated as “CONFIDENTIAL” and/or any information derived therefrom may be disclosed or made available by counsel for a Party only to the following persons:

(a) The Parties to the Litigation (including partners, directors, officers, in-house counsel, and employees of Plaintiffs and Defendant), provided they have followed the procedures set forth in Paragraph 3;

(b) Counsel to the Parties who have entered appearances in the Litigation, members of their firms, associate attorneys, contract attorneys, paralegals, secretarial staff, clerical and other regular or temporary employees, and service vendors of such counsel (including outside copying services and outside litigation support services such as translators and interpreters);

(c) Any persons associated with or employed by such attorneys or their firms, when working in connection with this Litigation under the direct supervision of partners or associates of said firms;

(d) The Parties’ insurers and their employees;

(e) Any outside experts or consultants that have been consulted for the purpose of being retained, or who have been retained by counsel to provide assistance, expert advice or technical consultation, provided however, that prior to receiving Protected Discovery Materials, such outside experts or consultants shall execute an Endorsement of Protective Order in the form attached hereto as Exhibit A;

(f) The Court and any of the Court's staff and administrative personnel and court reporters, stenographers, and videographers employed to take depositions, and any essential personnel retained by the Court;

(g) Any other person only upon order of the Court or upon written agreement of the Designating Party;

(h) Persons working in connection with this Litigation under the direct supervision of persons described in Paragraphs 6(a) - (d) above, but only to the extent necessary to perform their work in connection with this Litigation;

(i) Persons who authored the "CONFIDENTIAL" discovery material or who received such "CONFIDENTIAL" discovery material in the ordinary course of business;

(j) Persons noticed for depositions or designated as trial witnesses and their attorneys or those counsel of record who in good faith expect to testify at deposition or trial, to the extent reasonably necessary in preparing to testify; and

(k) Such persons as counsel for the Designating Party shall consent to in writing before the proposed disclosure.

7. Procedure for Designating and Producing Protected Materials: All Discovery Material, whether or not filed with the Court, that contains Protected Information for which the Designating Party seeks protection under this Order shall be designated as "CONFIDENTIAL"

as follows:

(a) Documents or other tangible Discovery Material shall, at the time of their production, be so designated by stamping or labeling the material(s) “CONFIDENTIAL.”

(b) Any non-party who is producing discovery materials in the Litigation may agree to and obtain the benefits of the terms and protections of this Order by designating as “CONFIDENTIAL” the discovery materials that the non-party is producing.

(c) Deposition testimony shall be designated “CONFIDENTIAL”: (i) at the taking of the deposition by a statement on the record, by counsel at the time of such disclosure, or (ii) by written notice sent to counsel of record for all Parties within thirty (30) days after receiving a copy of the transcript thereof by counsel making the designations or forty (40) days if the deponent shall have testified in a language other than English, identifying the specific pages thereof designated as “CONFIDENTIAL” by page and line numbers. Counsel shall not permit deposition transcripts to be distributed to persons beyond those as specified in this Order, other than the deponent, until the relevant period for the designation has expired. Until the expiration of the relevant time period, the entire text of the deposition, including exhibits, shall be treated as confidential under this Order. If prior to the expiration of the applicable designation period a Party desires to file any motion or pleading that will include reference to, or attach as exhibits, any portion of the deposition transcript or “CONFIDENTIAL” exhibits thereto, said Party shall give reasonable notice (not less than five business days prior to the filing of the motion or pleading) to the other Party and deponent of the proposed filing date of the motion or pleading and of the pages and/or exhibits to be cited. Any Party or deponent who desires to designate or preserve any of the identified material as “CONFIDENTIAL” shall so designate such material no less than two business days prior to the proposed filing date. If no Party or deponent designates

any pages or exhibits from the deposition as “CONFIDENTIAL” within the time frame provided for in this Paragraph, then the material will not be treated as Protected Discovery Material unless all Parties consent to late designation or by order of the Court.

Any Discovery Material designated as “CONFIDENTIAL,” whether such information is provided orally or by a document, shall be maintained as set forth herein, and shall not be disclosed to any person or entity, except as set forth herein.

Inadvertent failure to designate Discovery Material as “CONFIDENTIAL” shall not constitute a waiver of such claim and may be corrected by prompt supplemental written notice designating such Discovery Material as “CONFIDENTIAL.” The Party receiving such supplemental written notice shall thereafter mark and treat materials so designated as “CONFIDENTIAL” and such materials shall be fully subject to this Order as if they had been initially so designated. A person disclosing Discovery Material that is subsequently designated as “CONFIDENTIAL” shall in good faith assist the Designating Party in retrieving such Discovery Material from all recipients not entitled to receive such Discovery Material under the terms of this Order and will thereafter act in good faith to prevent further disclosures except as authorized under the terms of this Order. After receipt of such notification, the persons to whom production has been made shall prospectively treat the designated discovery materials as “CONFIDENTIAL,” subject to their right to dispute such designation in accordance with this Order.

8. Non-Party Designation of Discovery Material: Any non-party to this Litigation may designate any Discovery Material taken from it, whether pursuant to subpoena or by agreement, as “CONFIDENTIAL” pursuant to the terms of this Order, upon such non-party’s written agreement to be subject to and governed by the terms hereof, and such Discovery Material shall

thereafter be handled in accordance with the requirements of this Order. A non-party shall designate any Discovery Material as “CONFIDENTIAL” in a manner consistent with the procedures described in this Order.

9. Use of Protected Information in Depositions: A deponent may during the deposition be shown and examined about Protected Discovery Materials if the provisions of this Order are complied with. Deponents shall not retain or copy portions of the transcript of their depositions that contain Protected Information not provided by them or the entities they represent unless they sign the Endorsement of Protective Order at Exhibit A.

A deponent who is not a Party, an employee or representative of a Party or the attorney of said non-party, employee, or representative of a Party, shall be furnished with a copy of this Order before being examined about, or asked to produce, potentially protected documents. The parties shall use their best efforts to make sure that every witness to be shown Protected Discovery Materials signs the Endorsement of Protective Order. Deponents shall not retain or copy portions of the transcript of their depositions that contain Protected Information provided by other Parties.

10. Filing of Protected Discovery Materials with the Court: Discovery Material that has been designated as “CONFIDENTIAL” pursuant to the provisions of this Order and that any party desires to file must be done so in compliance with Rules 5.1.2(7) and 5.1.5 of the Local Rules of Civil Procedure of the Eastern District of Pennsylvania.

If any brief, memorandum, motion, letter, affidavit, or other document filed with the Court (a “Filing”) is filed under seal with the Court in accordance with Rules 5.1.2(7) and 5.1.5 of the Local Rules of Civil Procedure of the Eastern District of Pennsylvania because the Filing would disclose information from Discovery Material that has been designated “CONFIDENTIAL”

pursuant to the provisions of this Order or otherwise would disclose Protected Information of any designating Party or any non-party, the Designating Party shall comply with the provisions of this Order and within five (5) business days, shall also file a copy of such Filing for public inspection that omits only the information that the Designating Party believes should continue to be sealed for good cause.

11. Disputes Regarding Designation of Discovery Material: If at any time a Party wishes for any reason to dispute a designation of Discovery Materials as “CONFIDENTIAL” made hereunder, such person shall notify the Designating Party of such dispute in writing, specifying by Bates number(s) and/or transcript pages and lines, the Discovery Materials in dispute. The Designating Party shall respond in writing within ten (10) days of receiving this notification.

If the Parties are unable to amicably resolve the dispute, the proponent of the “CONFIDENTIAL” designation may apply by motion for a ruling that Discovery Materials designated as “CONFIDENTIAL” are entitled to such status and protection under the applicable Rules and this Order. Such motion shall be made within twenty (20) days of receipt by the Designating Party of the notification of the receiving party’s challenge to the designation or such other time period as the Parties may agree in writing. The Designating Party shall have the burden of proof on such motion to establish the propriety of its “CONFIDENTIAL” designation.

If the time for filing a motion, as provided in the preceding paragraph, has expired without the filing of any such motion, or ten (10) business days (or such longer time as ordered by this Court) have elapsed after the appeal period for an order that the Discovery Material shall not be entitled to “CONFIDENTIAL” status, the Protected Discovery Material shall lose its designation.

12. Applicability of Rulings and/or Agreements Regarding the Designation of Protected

Discovery Materials: The Parties agree that this Court has jurisdiction to hear challenges to the designation of documents that are first produced and/or specifically reproduced in this Litigation.

13. Declassification: Nothing shall prevent disclosure of “CONFIDENTIAL” Discovery Materials beyond that required under this Order if the Designating Party consents in writing to such disclosure or if the Court, after notice to all affected parties, orders such disclosure; provided, however, that should the Court or any appellate court enter a stay of disclosure Order, disclosure may not occur until such stay is lifted or vacated.

14. Use of Protected Discovery Materials at Hearing or Trial: The manner in which Protected Discovery Material shall be handled at any hearing or at trial shall be determined by the Court conducting the hearing or trial.

15. Subpoena by other Courts or Agencies: If another court or an administrative agency subpoenas or otherwise orders production of Protected Discovery Materials or Protected Information which any Party or other person has obtained under the terms of this Order, the Party or other person to whom the subpoena or other process is directed shall immediately notify the Designating Party in writing of all of the following: (a) the discovery materials that are requested for production in the subpoena; (b) the date on which compliance with the subpoena is requested; (c) the location at which compliance with the subpoena is requested; (d) the identity of the party serving the subpoena; and (e) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena or other process has been issued. In no event shall Protected Discovery Materials be produced prior to the receipt of written notice by the Designating Party and after a reasonable opportunity to object has been afforded. Furthermore, the Party or person receiving the subpoena or other process shall cooperate with the Designating Party in any proceeding related thereto. However, the

Designating Party shall bear the burden and all costs of opposing, if it deems appropriate, the subpoena on grounds of confidentiality.

16. Non-Termination: The provisions of this Order shall not terminate at the conclusion of this Litigation. Within ninety (90) days after final conclusion of this Litigation, including any appeals related thereto, or such other time as the Designating Party may agree in writing, counsel shall, at their option, return or destroy Protected Discovery Materials and documents or things containing Protected Information and all copies thereof. If counsel elects to destroy Protected Discovery Materials, they shall consult with counsel for the Designating Party on the manner of destruction and obtain such Party's consent as to the method and means of destruction. Outside counsel, however, shall not be required to return or destroy any pretrial or trial records that are regularly maintained by that counsel in the ordinary course of business; such records will continue to be maintained as Protected Discovery Materials and Protected Information in conformity with this Order. Outside counsel also may retain the privileged communications, work product, signed copies of the Endorsement of Protective Order and Protective Order pursuant to Paragraph 2, and all court filed documents even though they contain Protected Discovery Materials, but such documents shall remain subject to the terms of this Protective Order.

17. Modification Permitted: Nothing in this Order shall prevent any Party or other person from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

18. Responsibility of Attorneys; Copies: The attorneys of record are responsible for employing reasonable measures to control and track, consistent with this Order, access to, and distribution of Protected Discovery Materials, including abstracts and summaries thereof.

19. No Waiver of Privilege: If information subject to a claim of attorney-client privilege or work product immunity or any other privilege or immunity is inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information under the law. If a Party has inadvertently or mistakenly produced information subject to a claim of immunity or privilege, upon written request made by the producing Party within twenty-one (21) days of discovery of such inadvertent or mistaken production, the information for which a claim of inadvertent production is made, including all copies, shall be returned within seven (7) business days of such request unless the receiving Party intends to challenge the producing Party's assertion of privilege or immunity. All copies of inadvertently or mistakenly produced documents shall be destroyed, and any document, material or information reflecting the contents of the inadvertently produced information shall be expunged. If a receiving Party objects to the return of such information within the seven (7) business day period described above, the producing Party may move the Court for an order compelling the return of such information. Pending the Court's ruling, a receiving Party may retain the inadvertently or mistakenly produced documents in a sealed envelope and shall not make any use of such information.

20. No Waiver of Rights or Implication of Discoverability: No disclosure pursuant to any provision of this Order shall waive any rights or privileges of any Party or person granted by this Order.

21. No Waiver of Right to Appropriately Withhold or Redact: The terms of this Order shall in no way affect the right of any person (a) to withhold or redact information on the alleged grounds of immunity from discovery such as, for example, attorney/client privilege, work product or privacy rights of such third parties; or (b) to withhold or redact information on alleged

grounds that such information is neither relevant to any claim or defense nor reasonably calculated to lead to the discovery of admissible evidence. If information is redacted in a document on the basis that it is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, a Party may request, and the producing Party shall provide the reason for the redaction.

22. No Waiver of Right to Object to Scope of Discovery: This Order shall not enlarge or affect the proper scope of discovery in this or any other litigation; nor shall this order imply that Protected Discovery Materials or Protected Information is properly discoverable, relevant, or admissible in this Litigation or any other litigation. Each Party reserves the right to object to any disclosure of information or production of any documents that the Designating Party designates as Protected Discovery Materials on any other ground it may deem appropriate.

23. No Waiver of Rights to Seek Further Relief: The entry of this Order shall be without prejudice to the rights of the Parties, or any one of them, or of any non-party to assert or apply for additional or different protection. Nothing in this Order shall prevent any Party from seeking an appropriate protective order to further govern the use of Protected Discovery Materials or Protected Information at trial.

24. Miscellaneous: Nothing in this order shall prevent a Designating Party from any use of its own documents and information.

25. Improper Disclosure of Protected Discovery Materials: Disclosure of Protected Discovery Materials or Protected Information other than in accordance with the terms of this Protective Order may subject the disclosing Party or person to such sanctions and remedies as the Court may deem appropriate.

STIPULATED AND AGREED on this __ day of April, 2014:

Respectfully Submitted By:

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DATED: April __, 2014

DATED: April __, 2014

APPROVED AND SO ORDERED this 30th day of April, 2014.

BY THE COURT:

/s/ Michael M. Baylson

BAYLSON, J.

EXHIBIT A

ENDORSEMENT OF PROTECTIVE ORDER

I hereby attest to my understanding that information or documents designated as Protected Discovery Materials or Protected Information are provided to me subject to the Protective Order dated _____, 2014 (the "Order"), in the above-captioned litigation ("Litigation"); that I have been given a copy of and have read the Order; and that I agree to be bound by its terms. I also understand that my execution of this Endorsement of Protective Order, indicating my agreement to be bound by the Order, is a prerequisite to my review of any information or documents designated as Protected Discovery Material or Protected Information pursuant to the Order.

I further agree that I shall not disclose to others, except in accord with the Order, any Protected Discovery Materials or Protected Information, in any form whatsoever, and that such Protected Discovery Materials and Protected Information may be used only for the purposes authorized by the Order.

I further agree to return all copies of any Protected Discovery Materials or any document or thing containing Protected Information I have received to counsel who provided them to me, or to destroy such materials, upon completion of the purpose for which they were provided and no later than the conclusion of this Litigation.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such Protected Discovery Material and Protected Information will continue even after this Litigation concludes.

I further agree and attest to my understanding that, if I fail to abide by the terms of the Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of the District Court for the Eastern District of Pennsylvania for the purposes of any proceedings relating to enforcement of the Order. I further agree to be bound by and to comply with the terms of the Order as soon as I sign this Agreement, regardless of whether the Order has been entered by the Court.

Date: _____

By: _____