

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CELINA WHINERY,

Plaintiff,

v.

LIFE INSURANCE COMPANY OF
NORTH AMERICA; and CITIGROUP
LIFE INSURANCE BENEFIT PLAN,

Defendants.

Case No.: CV10-09312-PA-AGR

**CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER**

Honorable Percy Anderson
Filing Date: December 3, 2010

CONFIDENTIALITY AGREEMENT AND AGREED PROTECTIVE ORDER

WHEREAS, Defendants, LIFE INSURANCE COMPANY OF NORTH AMERICA and CITIGROUP LIFE INSURANCE BENEFIT PLAN ("the Plan"), have agreed to produce certain materials pursuant to the parties agreement to be used for pretrial discovery in connection with this lawsuit, which these Defendants consider to be highly confidential, privileged and to contain trade secrets, proprietary information, and private and personal information regarding third parties;

1 WHEREAS, Neither the proposal of nor the entry of the Agreed Protective
2 Order shall be considered as or work as a waiver by Life Insurance Company of
3 North America the Plan their argument that discovery in this matter is governed
4 by the Employee Retirement Income Security Act of 1974, as amended
5 ("ERISA"), 29 U.S.C. § 1132, *et seq.* As such, it is Defendants' argument that, to
6 the extent discovery is permitted in ERISA matters, Defendants expressly reserve
7 their right, and expressly do not waive or compromise their right, to object to any
8 information derived from or during discovery that was not included within the
9 Administrative Record at the time the Life Insurance Company of North America
10 rendered a decision.

14 WHEREAS, the Defendants, LIFE INSURANCE COMPANY OF NORTH
15 AMERICA and the Plan are producing the information as agreed to by the
16 parties, and seeking that this material be subject to the limitations set forth in this
17 Protective Agreement;

20 IT IS HEREBY ORDERED that a Protective Order be entered pursuant to
21 Federal Rule of Civil Procedure 26 (C) as follows:

23 **DEFINITIONS**

24 (a) "Protected Material" shall mean the following documents and
25 information produced by LIFE INSURANCE COMPANY OF NORTH AMERICA
26 and the Plan in Response to Plaintiff's Interrogatories, Requests for Production and
27
28

1 Requests for Admissions, marked as “CONFIDENTIAL” or “CONFIDENTIAL
2 SUBJECT TO PROTECTIVE ORDER”:

- 3 1. LINA's responses to interrogatories sets one and two;
- 4 2. LINA's responses to request for production of documents sets one, two
5 and three;
- 6 3. LINA's responses to requests for admissions, set one;
- 7 4. The Plan's responses to interrogatories set one;
- 8 5. The Plan's responses to request for production of documents, set two;
- 9 6. Any deposition testimony transcripts and testimony relating to the
10 Protected Material;
- 11 7. Any written discovery propounded or depositions noticed subsequent to
12 the entry of this Protective Order and calling for the production of Protected
13 Material.

14 (b) “Qualified Person” as used herein means:

15 (1) Counsel of Record for the parties in this litigation, and any
16 attorneys, paralegals, legal secretaries or other support staff who are
17 regularly employed by, or associated with, the office of a Counsel of
18 Record, who have received specific authority from that Counsel of
19 Record to view documents or other information designated as
20 “Protected Material” for purpose of this litigation; Actual or potential
21 independent experts or consultants retained by any party to this
22 litigation. Before disclosure of Protected Material to any person under
23 this Confidentiality Agreement and Agreed Protective Order, each such
24 person shall be provided with a copy of this Confidentiality Agreement
25 and Agreed Protective Order and shall execute a Non-Disclosure
26 Agreement (Exhibit A). The original version of each signed Non-
27 Disclosure Agreement shall be maintained by the counsel who retained
28

1 the expert, for production to opposing counsel upon request after
2 termination of this lawsuit and exhaustion of all appeals, or on good
3 cause shown. The parties agree that this section is not intended, and
4 may not be used, to circumvent any disclosure rules concerning opinion
5 witnesses, trial witnesses, expert witnesses, or consultants;

6 (2) Parties (Plaintiff and Named Defendant(s));

7 (3) Any other person may be designated as a “Qualified
8 Person” by Order of this Court, after notice and hearing.

9 **STIPULATED TERMS**

10 1. All Protected Material shall be governed by the provisions of this
11 Confidentiality Agreement and Agreed Protective Order.

12 2. Protected Material shall be labeled with any combination of the words
13 and/or terms “CONFIDENTIAL” or “CONFIDENTIAL SUBJECT TO
14 PROTECTIVE ORDER”.

15 3. Protected Material and the information contained therein shall not be
16 disclosed or made available to person other than Qualified Persons, except as stated
17 in this paragraph. Protected Material shall be restricted in circulation to Qualified
18 Persons described in the Definitions section of this document. The viewing of
19 material or copies of documents produced under this Confidentiality Agreement and
20 Agreed Protective Order may be made, or exhibits prepared by, independent copy
21 services for the purposes of this litigation.

22 4. Each party’s outside counsel shall maintain a log of all copies of
23 Protected Material which are delivered to any one or more Qualified Persons outside
24
25
26
27
28

1 the office of the counsel of record, as described in the Definitions section of this
2 document, or to independent copy services.

3 5. Nothing herein shall prevent disclosure outside the terms of the
4 Confidentiality Agreement and Agreed Protective Order if each party designating the
5 information as Protected Material consents to such disclosure or if the Court, after
6 notice to all parties, orders such disclosure.
7

8 6. Nothing in this Confidentiality Agreement and Agreed Protective Order
9 shall be construed as preventing or prohibiting a party from seeking additional
10 protection from the Court against disclosure of classified information, including an
11 order that such information may not be disclosed, or that it may be disclosed only in
12 a designated way.
13

14 7. If a receiving party disagrees with a producing party's designation of any
15 Protected Material, the receiving party may request in writing that the producing
16 party re-designate such Protected Material. If the producing party does not re-
17 designate the Protected Material, the receiving party may request the Court to order
18 the re-designation of such Protected Material. It is the producing party's burden to
19 prove good cause for any such designation challenged by the receiving party.
20
21

22 8. All pleadings, and all motions, briefs and other papers intended to be
23 filed with the Court, including copies to be served on counsel, that include, in whole
24 or in part, Protected Material shall be preceded by a request by way of Motion to the
25 Court that the Protected Material be permitted to be filed under seal. If the Court
26
27
28

1 refuses to file the Protected Material under seal, the Protected Material may not be
2 filed with the Court.

3 9. No person to whom any Protected Material is disclosed may use the
4 Protected Material for any purpose other than discovery in this action, preparation
5 for trial of this action, the trial of this action or settlement or appeal of this action.
6 No person to whom any Protected Material is disclosed may use, exchange, loan or
7 in any manner disclose the Protected Material to anyone beyond the provisions of
8 this Confidentiality Agreement and Agreed Protective Order.
9
10

11 10. After the final termination of this action, the provisions hereof relating
12 to the secrecy and confidentiality of the Protected Material and information
13 contained therein shall continue to be binding.
14

15 11. Within thirty (30) days of conclusion of this litigation, or any appeal
16 thereof, all Protected Material in the possession of any Qualified Person shall be
17 returned to the party which produced the Protected Material, including any
18 documents which have been provided any testifying expert, consulting expert, or
19 other person who obtained Protected Materials, except as this Court may otherwise
20 order.
21
22

23 12. The parties further agree that prior to their production; the personally
24 identifying information on all documents containing any such personally identifying
25 information shall be redacted.
26
27
28


1 13. This Confidentiality Agreement and Agreed Protective Order may be
2 modified by agreement of counsel for the parties, provided that any such agreement
3 is memorialized in the form of a stipulation that shall be filed with the Clerk and
4 made a part of the record in this action.
5

6 14. This Confidentiality Agreement and Agreed Protective Order shall be
7 without prejudice to the right of any party to contest the admissibility of the
8 Protected Material. Nothing contained herein shall be construed as a waiver of any
9 objection that might be raised as to the admissibility at trial of any evidence.
10

11 15. Any party designating any person as a Qualified Person shall have the
12 duty to reasonably ensure that such person observes the terms of this Confidentiality
13 Agreement and Agreed Protective Order and shall be responsible upon breach of
14 such duty for the failure of any such person to observe the terms of this Protective
15 Agreement.
16
17

18 16. This Confidentiality Agreement and Agreed Protective Order may be
19 executed in counter-parts by counsel for the parties and maintain its full and binding
20 force and effect.
21

22
23
24 Date: August 1, 2011

By: 
Hon. Alicia G. Rosenberg
United States Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

UNITED STATES DISTRICT COURT

CELINA WHINERY,

Plaintiff,

v.

LIFE INSURANCE COMPANY
OF NORTH AMERICA; and
CITIGROUP LIFE INSURANCE
BENEFIT PLAN,

Defendants.

Case No.: CV10-09312-PA-AGR

District Judge: Hon. Percy

Anderson

Magistrate Judge: Hon. Alicia G.

Rosenberg

Filing Date: December 3, 2010

NON-DISCLOSURE AGREEMENT

I, _____, have reviewed the Confidentiality Agreement and Agreed Protective Order entered by the Court in the above-styled matter, and I have had an opportunity to review it and seek independent counsel about its contents. Having read the Confidentiality Agreement and Agreed Protective Order, understanding its contents, including the obligations and duties it imposes upon me, and agreeing to abide by it, I voluntarily, knowingly, and by my own hand execute this Non-Disclosure Agreement, which obligates me to adhere to the terms of the Confidentiality Agreement and Agreed Protective Order.

EXECUTED this _____ day of _____, 2011.

1 **CERTIFICATE OF SERVICE**

2 *Celina Whinery v. Life Insurance Company of North America; et al.*
3 *U.S.D.C. Central District of California Case No.: CV-10-09312-PA-AGR*

4 At the time of service I was over 18 years of age and not a party to this action.
5 I am employed by WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER
6 LLP. My business address is 525 Market Street, 17th Floor, San Francisco,
7 California 94105. My business telephone number is (415) 433-0990; my business
8 fax number is (415) 434-1370. On this date I served the following document(s):

9 **[PROPOSED] PROTECTIVE ORDER**

10 on the person or persons listed below, through their respective attorneys of record in
11 this action, by placing true copies thereof in sealed envelopes or packages addressed
12 as shown below by the following means of service:

13 : **By United States Mail.** I placed the envelope(s) for collection and mailing,
14 following our ordinary business practices. I am readily familiar with this
15 business's practice for collecting and processing correspondence for mailing.
16 On the same day that correspondence is placed for collection and mailing, it is
17 deposited in the ordinary course of business with the United States Postal
18 Service, in a sealed envelope with postage fully prepaid.

19 : **By Overnight Delivery.** I enclosed the documents in an envelope or package
20 provided by an overnight delivery carrier and address to the persons at the
21 addresses below. I placed the envelope or package for collection and
22 overnight delivery at an office or a regularly utilized drop box of the overnight
23 delivery carrier.

24 : **By Messenger Service.** I served the documents by placing them in an
25 envelope or package addressed to the persons at the addresses listed below
26 and provided them to a professional messenger service for service.

27 : **By Fax Transmission.** Based on an agreement of the parties to accept service
28 by fax transmission, I faxed the documents to the persons at the fax numbers
listed below. No error was reported by the fax machine that I used. A copy of
the record of the fax transmission, which was printed out, is attached.

: **By Electronic Service.** Based on a court order or an agreement of the parties
to accept service by electronic transmission, I caused the documents to be sent
to the persons at the electronic notification addresses listed below.

Glenn R. Kantor, Esq.
Brent Dorian Brehm, Esq.
Kantor & Kantor
19839 Nordhoff Street
Northridge, CA 91324

Tel: 818/886-2525
Fax: 818/350-6272
***Attorneys for Plaintiff, Celina
Whinery***

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct to the best of my knowledge. EXECUTED on
July 28, 2011 at San Francisco, California.

/s/ Liza H. Cachero
Liza H. Cachero