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

16 COVENTRY FIRST LLC, a Delaware  
 17 Limited Liability Company,

18 Plaintiff,

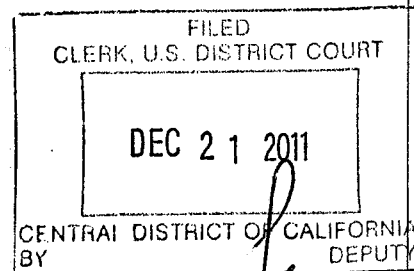
19 v.

20 JOHN HANCOCK LIFE  
 21 INSURANCE COMPANY (USA), a  
 Michigan corporation,

22 Defendant.

Case No. CV 11-01785 SJO (Ex)

**STIPULATION AND ~~PROPOSED~~  
 PROTECTIVE ORDER  
 CONCERNING CONFIDENTIAL  
 INFORMATION**



23  
 24 WHEREAS Plaintiff Coventry First, LLC ("Coventry") and Defendant  
 25 John Hancock Life Insurance Company (USA) ("Hancock") are conducting  
 26 discovery in connection with the above-captioned action;

27 WHEREAS the parties desire, by entering into this Stipulation and  
 28

STIPULATION AND PROTECTIVE ORDER

1 Protective Order, to protect the confidentiality of nonpublic and competitively-  
2 sensitive information that may need to be disclosed to adversary parties in  
3 connection with discovery in this case pursuant to Fed. R. Civ. P. 26(c) and 45, and  
4 to guard against the waiver of attorney-client privilege and work product protection  
5 pursuant to Fed. R. Evid. 502(d);

6 IT IS THEREFORE STIPULATED AND AGREED THAT:

7 1. Any Party (herein used to refer individually to plaintiff, defendant, and any  
8 other party who later appears in this action as a plaintiff or defendant and becomes bound  
9 by the terms of this Protective Order) or non-party may designate as "CONFIDENTIAL"  
10 any portions of any testimony, documents, records or tangible things – and any copies,  
11 abstracts, excerpts or analyses thereof – given, used, served or produced by the Party or  
12 non-party in connection with this action, including without limitation in response to  
13 formal discovery demands or subpoenas or in compliance with the initial disclosure  
14 requirements prescribed by Federal Rules of Civil Procedure 16 and 26(a), that the  
15 designating Party or non-party in good faith believes to contain, reflect, regard, or disclose  
16 any trade secret, confidential, private, personal or proprietary information. All materials  
17 designated as "CONFIDENTIAL" shall be referred to in this Stipulation and Protective  
18 Order as "CONFIDENTIAL INFORMATION."

19 2. A Party or non-party that inadvertently fails to mark an item as  
20 CONFIDENTIAL INFORMATION at the time it is given, used, served or produced may  
21 correct its failure in writing, accompanied by substitute copies of each item, container or  
22 folder, appropriately marked as CONFIDENTIAL INFORMATION, provided such  
23 writing and substitute copies are served no later than the discovery cutoff. Once substitute  
24 copies have been provided, all copies of the inadvertently unmarked item, container or  
25 folder shall be destroyed or returned to the producing Party or non-party.

26 3. No CONFIDENTIAL INFORMATION shall be made public by the  
27 receiving Party or divulged to anyone other than as set forth herein. Absent a specific  
28 order by the Court or if the designating Party otherwise agrees, once designated as

1 CONFIDENTIAL INFORMATION, such materials and information shall be used by the  
2 Parties solely in connection with this litigation, and not for any other purpose whatsoever,  
3 or in any other action, arbitration, hearing, dispute, tribunal or proceeding, for any reason  
4 whatsoever.

5 4. CONFIDENTIAL INFORMATION shall be treated by each receiving Party  
6 as confidential unless and until the Court rules to the contrary or the designating Party  
7 agrees otherwise. Unless and until the Court rules or the designating Party otherwise  
8 agrees, and except as set forth in Paragraph 5 herein, access to or disclosure of  
9 CONFIDENTIAL INFORMATION shall be limited to the following persons, subject to  
10 the qualification provisions contained in 4.d. and 4.f herein:

- 11 a. the Court and those employed by the Court;
- 12 b. each of the named Parties to the litigation who has, through that  
13 Party's respective counsel, signed this Stipulation and Protective  
14 Order (or who has accepted the terms of this Stipulation and  
15 Protective Order by the execution of Exhibit A hereto), including  
16 any representative of the Party (officers, directors, partners,  
17 employees) assisting in the prosecution or the defense of the  
18 litigation, and such Party's counsel, including the clerical,  
19 secretarial, and paralegal staff employed by such counsel;
- 20 c. court reporters and employees of court reporters engaged by  
21 counsel to record and transcribe testimony in this litigation, and  
22 translators engaged for any purpose in the litigation;
- 23 d. experts and consultants assisting in the prosecution or the defense  
24 of the litigation, plus their clerical and secretarial staff provided  
25 that such persons have first executed a Confidentiality  
26 Acknowledgement in the form attached as Exhibit A hereto;
- 27 e. authors or recipients of CONFIDENTIAL INFORMATION; and
- 28 f. persons from whom testimony is taken or is to be taken in the

1 litigation, either in a deposition or at trial, and their counsel,  
2 provided that CONFIDENTIAL INFORMATION may be  
3 disclosed to such persons only in the course of his or her  
4 testimony or preparation for such testimony, and that such person  
5 shall not retain such CONFIDENTIAL INFORMATION after his  
6 or her testimony is concluded unless he or she executes a  
7 Confidentiality Acknowledgement in the form attached as Exhibit  
8 A hereto.

9 5. Should any non-party serve a subpoena calling for the production of any  
10 CONFIDENTIAL INFORMATION on any Party or counsel for a Party who has received  
11 such information, the subpoenaed party in such instance shall, within 5 business days,  
12 provide notice to the Party that designated the information as CONFIDENTIAL  
13 INFORMATION via e-mail or facsimile. It shall be the obligation of the designating  
14 Party, prior to the response date on the subpoena, to seek a protective order or any other  
15 appropriate relief from the Court if the designating Party wishes to maintain the  
16 confidentiality of the material. A designating Party that fails to seek judicial relief to  
17 preclude the disclosure of any CONFIDENTIAL INFORMATION in response to a  
18 subpoena shall be deemed to have waived any claim of confidentiality with respect to  
19 such material.

20 6. In the case of depositions, if counsel for a Party believes that a portion or all  
21 of the deposition constitutes CONFIDENTIAL INFORMATION, counsel may so state on  
22 the record and may request that the specific pages which include such CONFIDENTIAL  
23 INFORMATION be included in a separate sealed portion of the transcript. The reporter  
24 shall be instructed to include on the cover page of each sealed portion the legend: "This  
25 transcript portion contains information subject to a Protective Order and shall be used  
26 only in accordance therewith."

27 7. When testimony designated as CONFIDENTIAL INFORMATION is (or is  
28 sought to be) elicited during a deposition, persons not entitled to receive such information

1 under the terms of this Stipulation and Protective Order shall be excluded from the  
2 deposition. Counsel attending a deposition who inadvertently fails to designate any  
3 portion of the transcript as CONFIDENTIAL INFORMATION on the record at the  
4 deposition may do so within ten (10) court days following mailing of the transcript by the  
5 Court reporter to that counsel. Such correction and notice thereof shall be made in writing  
6 to the reporter, with copies to all other counsel, designating the portion(s) of the transcript  
7 that constitute CONFIDENTIAL INFORMATION and directing the reporter to place that  
8 portion under seal as provided in Paragraph 6 herein.

9 8. In the event a Party wishes to file any CONFIDENTIAL INFORMATION  
10 with the Court for any purpose, to the extent practicable, that Party will inform the Party  
11 that designated the materials as CONFIDENTIAL INFORMATION so that the  
12 designating Party can consider whether to withdraw its confidentiality designation. If the  
13 designating party does not withdraw the confidentiality designation, the Party wishing to  
14 file the CONFIDENTIAL INFORMATION with the Court must submit such designated  
15 materials under seal in conformance with Central District Local Rule 79-5 and any other  
16 relevant rules and procedures of this Court. The Parties agree that such use of designated  
17 materials does not compromise the designated status of such information, and the Parties  
18 agree that any designating Party may seek to have such information maintained by the  
19 Court as CONFIDENTIAL INFORMATION.

20 9. The Parties recognize that a party intending to file documents or materials  
21 designated as CONFIDENTIAL INFORMATION by another party may not have  
22 information sufficient to support the application to file under seal. Consistent with  
23 Central District Local Rule 79-5, the filing Party will need to include such an application  
24 with its submission, but the designating Party shall bear the burden of establishing to the  
25 Court's satisfaction the confidentiality of any material designated as CONFIDENTIAL  
26 INFORMATION, including why the information must be sealed and the prejudice or  
27 harm the designating Party will suffer if the material is not granted the protection of being  
28 filed under seal. The designating party shall have three (3) full court days to provide any

1 other than that the testimony or evidence involves CONFIDENTIAL INFORMATION.

2 13. If during document production, the producing Party inadvertently produces  
3 a document entitled to protection under the attorney-client privilege, the attorney work  
4 product doctrine, or other provisions of applicable law: (a) the Parties agree that the  
5 erroneous or inadvertent production shall not constitute a waiver of such protection as to  
6 either the subject matter of the material or as to related documents or communications;  
7 and (b) the producing Party may request the return of the inadvertently produced  
8 document at any time before the commencement of trial, but no more than ten (10) court  
9 days after the document is first marked as a deposition exhibit, identified as a potential  
10 trial exhibit, or otherwise identified by any Party in any pleading or correspondence  
11 served on all Parties to this action. Any such request shall be made in writing, and shall  
12 identify the basis for the claimed protection. If the Party (or Parties) that received the  
13 inadvertently produced document agrees that the document is entitled to protection  
14 (without regard to its inadvertent production), all copies of the inadvertently produced  
15 document shall be returned to the producing Party or destroyed, and no reference to such  
16 document shall be made in discovery, at trial, or any other manner. If the Parties do not  
17 agree that the document is entitled to protection, the burden is on the producing Party to  
18 file an appropriate motion with the Court within twenty (20) court days after the document  
19 is first marked as a deposition exhibit, identified as a potential trial exhibit, or otherwise  
20 identified by any Party in any pleading or correspondence served on all Parties to this  
21 action.

22 14. This Stipulation and Protective Order shall not prevent a Party from  
23 applying to the Court for relief from this Order or any of its terms or provisions, or from  
24 applying to the Court for further or additional protective orders.

25 15. Nothing in this Stipulation and Protective Order shall preclude any person  
26 or entity from disclosing or using, in any manner or for any purpose, any information or  
27 document if that information or document is lawfully obtained from a third party under no  
28 obligations of confidentiality with respect thereto and having the right to disclose such

1 information. Nothing in this Stipulation and Protective Order shall preclude any person or  
2 entity from disclosing or using, in any manner or for any purpose, any information or  
3 document if that information or document is publicly available.

4 16. In the event that additional persons become parties to this action, they shall  
5 not have access to CONFIDENTIAL INFORMATION produced by or obtained from any  
6 Party or nonparty until the newly joined party or their counsel confirms in writing to all  
7 other Parties that they have read this Protective Order and agree to be bound by its terms.

8 17. The restrictions on use of CONFIDENTIAL INFORMATION set forth in  
9 this Stipulation and Protective Order shall survive the conclusion of this litigation and,  
10 after conclusion of this litigation, the Court shall exercise limited jurisdiction for the  
11 purpose of enforcing this Stipulation and Protective Order.

12 18. Within thirty (30) days after the final termination of this action, counsel for  
13 the receiving Party shall return all copies of the CONFIDENTIAL INFORMATION to  
14 counsel for the designating Party, or shall, at the option of the receiving Party, destroy  
15 such CONFIDENTIAL INFORMATION, and certify in writing that said destruction has  
16 occurred to counsel for the designating Party.

1           19. The terms of this Stipulation and Protective Order shall be effective and  
2 binding upon a party upon the signature of its counsel below.  
3  
4

5 Dated: December 16, 2011

O'MELVENY & MYERS LLP

6 By: Adam Levine

Adam G. Levine

7 Attorneys for Plaintiff COVENTRY FIRST  
8 LLC  
9

10 Dated: December 16, 2011

BOIES, SCHILLER & FLEXNER LLP

11 By: J. F. LaSalle

John F. LaSalle

12 Attorneys for Defendant JOHN HANCOCK  
13 LIFE INSURANCE CO. (U.S.A.)  
14  
15  
16

17 [PROPOSED] ORDER

18 Pursuant to the foregoing Stipulation and for good cause shown, IT IS SO  
19 ORDERED.

20 Dated: 12/21/11

21 CHARLES F. EICK  
The Honorable ~~S. James Otter~~ CHARLES F. EICK  
United States District Judge  
Magistrate Judge  
22  
23  
24  
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28



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

COVENTRY FIRST LLC, a Delaware  
Limited Liability Company,

Plaintiff,

v.

JOHN HANCOCK LIFE  
INSURANCE COMPANY (USA), a  
Michigan corporation,

Defendant.

Case No. CV 11-01785 SJO (Ex)

**CONFIDENTIALITY  
ACKNOWLEDGMENT**

I, \_\_\_\_\_, hereby acknowledge and declare that:

1. I have received a copy of the Stipulation and Protective Order in this action. I have carefully read and understand the provisions of the Stipulation and Protective Order.

2. I will comply with all of the provisions of the Stipulation and Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Stipulation and Protective Order, and will use only for purposes of this litigation (and not for any other purpose, including any business, competitive, or governmental purpose or function), any CONFIDENTIAL INFORMATION, including the substance and any copy, summary, abstract, excerpt, index or description of such material that is disclosed to me.

3. I will return all CONFIDENTIAL INFORMATION that comes into my possession, and all documents and things that I have prepared relating thereto, to counsel for the Party by whom I am employed or retained or from whom I received such material, when requested by such counsel to do so.

4. I understand that if I violate the provisions of the Stipulation and Protective Order, I may be subject to sanctions by the Court and the Parties, or any

CONFIDENTIALITY ACKNOWLEDGMENT

1 one of them, may assert other remedies against me. I hereby submit to the  
2 jurisdiction of the United States District Court for the Central District of California  
3 for the purpose of enforcement of the Stipulation and Protective Order in this  
4 action.

5 5. My address is: \_\_\_\_\_

6 6. My relationship to this case and the Parties thereto is: \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9  
10 I declare under penalty of perjury under the laws of the United States  
11 of America that the foregoing is true and correct.  
12

13 Dated: \_\_\_\_\_

14 \_\_\_\_\_  
(Signature)

15  
16 \_\_\_\_\_  
Print Name and Title  
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20 OMM\_US:70130951.4  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 19, 2011, the foregoing document was electronically transmitted to the United States Court Clerk's Office using the CM/ECF System for filing and transmittal.

/s/Adam G. Levine

Adam G. Levine