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United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KATHLEEN A. STOUT,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY, et al.,

Defendants.

Case No.: 11-6186 CW (JSC)

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Court issues this Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. As set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or items that
10 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the
12 medium or manner in which it is generated, stored, or maintained (including, among other
13 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
14 or responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
16 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
17 consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other
21 legal entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
23 action but are retained to represent or advise a party to this action and have appeared in this
24 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
25 that party.

26 2.10 Party: any party to this action, including all of its officers, directors, employees,
27 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

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1 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this action.

3 2.12 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Order cover not only Protected Material (as defined
13 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
14 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
16 However, the protections conferred by this Order do not cover the following information: (a) any
17 information that is in the public domain at the time of disclosure to a Receiving Party or
18 becomes part of the public domain after its disclosure to a Receiving Party as a result of
19 publication not involving a violation of this Order, including becoming part of the public record
20 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
21 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
22 information lawfully and under no obligation of confidentiality to the Designating Party. Any
23 use of Protected Material at trial shall be governed by a separate agreement or order.

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations imposed by
26 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
27 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
28 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after

1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
2 action, including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or Non-Party that designates information or items for protection under this Order must take care
7 to limit any such designation to specific material that qualifies under the appropriate standards.
8 The Designating Party must designate for protection only those parts of material, documents,
9 items, or oral or written communications that qualify – so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are not swept
11 unjustifiably within the ambit of this Order.

12 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
13 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
14 unnecessarily encumber or retard the case development process or to impose unnecessary
15 expenses and burdens on other parties) expose the Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it designated
17 for protection do not qualify for protection, the Designating Party must promptly notify all other
18 Parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
20 (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
21 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
22 designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
26 Party affix the legend "CONFIDENTIAL" to each page that contains protected material. If only
27 a portion or portions of the material on a page qualifies for protection, the Producing Party also
28 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the

1 margins).

2 A Party or Non-Party that makes original documents or materials available for inspection
3 need not designate them for protection until after the inspecting Party has indicated which
4 material it would like copied and produced. During the inspection and before the designation, all
5 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
6 inspecting Party has identified the documents it wants copied and produced, the Producing Party
7 must determine which documents, or portions thereof, qualify for protection under this Order.
8 Then, before producing the specified documents, the Producing Party must affix the
9 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or
10 portions of the material on a page qualifies for protection, the Producing Party also must clearly
11 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
13 the Designating Party identify on the record, before the close of the deposition, hearing, or other
14 proceeding, all protected testimony.

15 (c) for information produced in some form other than documentary and for any
16 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
17 container or containers in which the information or item is stored the legend
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
19 the Producing Party, to the extent practicable, shall identify the protected portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the Designating Party’s
22 right to secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the material is
24 treated in accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the basis
6 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
7 notice must recite that the challenge to confidentiality is being made in accordance with this
8 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to review the
13 designated material, to reconsider the circumstances, and, if no change in designation is offered,
14 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
15 stage of the challenge process only if it has engaged in this meet and confer process first or
16 establishes that the Designating Party is unwilling to participate in the meet and confer process in
17 a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
20 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
21 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
22 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.
23 Each such motion must be accompanied by a competent declaration affirming that the movant
24 has complied with the meet and confer requirements imposed in the preceding paragraph.
25 Failure by the Designating Party to make such a motion including the required declaration
26 within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
27 designation for each challenged designation. In addition, the Challenging Party may file a
28 motion challenging a confidentiality designation at any time if there is good cause for doing so,

1 including a challenge to the designation of a deposition transcript or any portions thereof. Any
2 motion brought pursuant to this provision must be accompanied by a competent declaration
3 affirming that the movant has complied with the meet and confer requirements imposed by the
4 preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating
6 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
7 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
8 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
9 file a motion to retain confidentiality as described above, all parties shall continue to afford the
10 material in question the level of protection to which it is entitled under the Producing Party's
11 designation until the court rules on the challenge.

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
14 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
16 to the categories of persons and under the conditions described in this Order. When the litigation
17 has been terminated, a Receiving Party must comply with the provisions of section 13 below
18 (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a location and
20 in a secure manner that ensures that access is limited to the persons authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
23 disclose any information or item designated "CONFIDENTIAL" only to:

24 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
26 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
27 Bound" that is attached hereto as Exhibit A;

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
2 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
4 reasonably necessary for this litigation and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants, mock
8 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation
9 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by the court**. Pages
13 of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must
14 be separately bound by the court reporter and may not be disclosed to anyone except as
15 permitted under this Protective Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
19 **OTHER LITIGATION**

20 If a Party is served with a subpoena or a court order issued in other litigation that compels
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
22 Party must:

23 (a) promptly notify in writing the Designating Party. Such notification shall
24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to issue
26 in the other litigation that some or all of the material covered by the subpoena or order is subject
27 to this Protective Order. Such notification shall include a copy of this Protective Order; and

28 (c) cooperate with respect to all reasonable procedures sought to be pursued by the

1 Designating Party whose Protected Material may be affected.

2 If the Designating Party timely seeks a protective order, the Party served with the
3 subpoena or court order shall not produce any information designated in this action as
4 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
5 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
6 shall bear the burden and expense of seeking protection in that court of its confidential material
7 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
8 Party in this action to disobey a lawful directive from another court.

9 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
10 THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a Non-
12 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-
13 Parties in connection with this litigation is protected by the remedies and relief provided by this
14 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to
17 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
18 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
19 Party shall:

20 1. promptly notify in writing the Requesting Party and the Non-Party that
21 some or all of the information requested is subject to a confidentiality agreement with a Non-
22 Party;

23 2. promptly provide the Non-Party with a copy of the Protective Order in this
24 litigation, the relevant discovery request(s), and a reasonably specific description of the
25 information requested; and

26 3. make the information requested available for inspection by the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this court
28 within 14 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non-Party's confidential information responsive to the discovery request. If the
2 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information
3 in its possession or control that is subject to the confidentiality agreement with the Non-Party
4 before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall
5 bear the burden and expense of seeking protection in this court of its Protected Material.

6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
8 Material to any person or in any circumstance not authorized under this protective Order, the
9 Receiving Party must immediately (a) notify in writing the Designating Party of the
10 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
11 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
12 made of all the terms of this Order, and (d) request such person or persons to execute the
13 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

14 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order that provides for production without prior privilege review. Pursuant to Federal Rule of
21 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
22 communication or information covered by the attorney-client privilege or work product
23 protection, the parties may incorporate their agreement in a stipulated protective order submitted
24 to the court.

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27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 12. MISCELLANEOUS

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. As the parties have not stipulated to the entry of
5 this Protective Order, no Party waives any right it otherwise would have to object to disclosing or
6 producing any information or item on any ground not addressed in this Protective Order.
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the Designating Party
10 or a court order secured after appropriate notice to all interested persons, a Party may not file in
11 the public record in this action any Protected Material. A Party that seeks to file under seal any
12 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
13 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
14 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
15 sealing order will issue only upon a request establishing that the Protected Material at issue is
16 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
17 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
18 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the
19 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed
20 by the court.

21 13. FINAL DISPOSITION

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
23 Receiving Party must return all Protected Material to the Producing Party or destroy such
24 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the Protected
26 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
27 submit a written certification to the Producing Party (and, if not the same person or entity, to the
28 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all

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the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO ORDERED.

Dated: September 25, 2012



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE