

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Jul 30, 2018**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JARED SHAW, an unmarried  
individual,

NO: 2:17-CV-432-RMP

Plaintiff,

PROTECTIVE ORDER

v.

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY,

Defendant.

**PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the

following Stipulated Protective Order. The parties acknowledge that this

agreement is consistent with LCR 26(c). It does not confer blanket protection on

all disclosures or responses to discovery, the protection it affords from public

disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles, and it does not  
2 presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include, but is not limited to, the following  
5 documents and tangible things produced or otherwise exchanged:

- 6 (a) American Family’s claims manuals;
- 7 (b) American Family’s course and training materials; and
- 8 (c) American Family’s confidential and proprietary information that may  
9 be included within documents produced pursuant to Plaintiff’s  
10 discovery requests.

11 3. SCOPE

12 The protections conferred by this agreement cover not only confidential  
13 material (as defined above), but also (1) any information copied or extracted from  
14 confidential material; (2) all copies, excerpts, summaries, or compilations of  
15 confidential material; and (3) any testimony, conversations, or presentations by  
16 parties or their counsel that might reveal confidential material. However, the  
17 protections conferred by this agreement do not cover information that is in the  
18 public domain or becomes part of the public domain through trial or otherwise.

19 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20 4.1 Basic Principles. A receiving party may use confidential material that  
21 is disclosed or produced by another party or by a non-party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation.

2 Confidential material may be disclosed only to the categories of persons and under  
3 the conditions described in this agreement. Confidential material must be stored  
4 and maintained by a receiving party at a location and in a secure manner that  
5 ensures that access is limited to the persons authorized under this agreement.

6 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
7 otherwise ordered by the court or permitted in writing by the designating party, a  
8 receiving party may disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as  
10 employees of counsel to whom it is reasonably necessary to disclose the  
11 information for this litigation;

12 (b) the officers, directors, and employees (including in-house counsel) of  
13 the receiving party to whom disclosure is reasonably necessary for this litigation,  
14 unless the parties agree that a particular document or material produced is for  
15 Attorney’s Eyes Only and is so designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary  
17 for this litigation and who have signed the “Acknowledgement and Agreement to  
18 Be Bound” (Exhibit A);

19 (d) the court, court personnel, and court reporters and their staff;

20 (e) copy of imaging services retained by counsel to assist in the  
21 duplication of confidential material, provided that counsel for the party retaining

1 the copy or imaging service instructs the service not to disclose any confidential  
2 material to third parties and to immediately return all originals and copies of any  
3 confidential material;

4 (f) during their depositions, witnesses in the action to whom disclosure is  
5 reasonably necessary and who had signed the “Acknowledgment and Agreement to  
6 Be Bound” (Exhibit A), unless otherwise agreed by the designating party or  
7 ordered by the court. Pages of transcribed deposition testimony or exhibits to  
8 depositions that reveal confidential material must be separately bound by the court  
9 reporter and may not be disclosed to anyone except as permitted under this  
10 agreement;

11 (g) the author or recipient of a document containing the information or a  
12 custodian or other person who otherwise possessed or know the information.

13 4.3 Filing Confidential Material. Before filing confidential material or  
14 discussing or referencing such material in court filings, the filing party shall confer  
15 with the designating party to determine whether the designating party will remove  
16 the confidential designation, whether the document can be redacted, or whether a  
17 motion to seal or stipulation and proposed order is warranted. Local Civil Rule  
18 5(g) sets forth the procedures that must be followed and the standards that will be  
19 applied when a party seeks permission from the court to file material under seal.

20 5. DESIGNATING PROTECTED MATERIAL

1           5.1   Exercise of Restraint and Care in Designating Material for Protection.

2 Each party or non-party that designates information or items for protection under  
3 this agreement must take care to limit any such designation to specific material that  
4 qualifies under the appropriate standards. The designating party must designate for  
5 protection only those parts of material, documents, items, or oral or written  
6 communications that qualify, so that other portions of the material, documents,  
7 items, or communications for which protection is not warranted are not swept  
8 unjustifiably within the ambit of this agreement.

9           Mass, indiscriminate, or routinized designations are prohibited.

10 Designations that are shown to be clearly unjustified or that have been made for an  
11 improper purpose (*e.g.*, to unnecessarily encumber or delay the case development  
12 process or to impose unnecessary expenses and burdens on other parties) expose  
13 the designating party to sanctions.

14           If it comes to a designating party's attention that information or items that it  
15 designated for protection do not qualify for protection, the designating party must  
16 promptly notify all other parties that it is withdrawing the mistaken designation.

17           5.2   Manner and Timing of Designations. Except as otherwise provided in  
18 this agreement (see, *e.g.*, second paragraph 5.2(a) below), or as otherwise  
19 stipulated or ordered, disclosure or discovery material that qualifies for protection  
20 under this agreement must be clearly designated before or when the material is  
21 disclosed or produced.

1 (a) Information in documentary form: (*e.g.*, paper or electronic  
2 documents and deposition exhibits, but excluding transcripts of depositions  
3 or other pretrial or trial proceedings), the designating party must affix the  
4 word “CONFIDENTIAL” to each page that contains confidential material.  
5 If only a portion or portions of the material on a page qualifies for  
6 protection, the producing party also must clearly identify the protected  
7 portion(s) (*e.g.*, by making appropriate markings in the margins).

8 (b) Testimony given in deposition or in other pretrial or trial proceedings:  
9 the parties must identify on the record, during the deposition, hearing, or  
10 other proceeding, all protected testimony, without prejudice to their right to  
11 so designate other testimony after reviewing the transcript. Any party or  
12 non-party may, within fifteen days after receiving a deposition transcript,  
13 designate portions of the transcript, or exhibits thereto, as confidential.

14 (c) Other tangible items: the producing party must affix in a prominent  
15 place on the exterior of the container or containers in which the information  
16 or item is stored the word “CONFIDENTIAL.” If only a portion or portions  
17 of the information or item warrant protection, the producing party, to the  
18 extent practicable, shall identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
20 failure to designate qualified information or items does not, standing alone, waive  
21 the designating party’s right to secure protection under this agreement for such

1 material. Upon timely correction of a designation, the receiving party must make  
2 reasonable efforts to ensure that the material is treated in accordance with the  
3 provisions of this agreement.

#### 4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a  
6 designation of confidentiality at any time. Unless a prompt challenge to a  
7 designating party's confidentiality designation is necessary to avoid foreseeable,  
8 substantial unfairness, unnecessary economic burdens, or a significant disruption  
9 or delay of the litigation, a party does not waive its right to challenge a  
10 confidentiality designation by electing not to mount a challenge promptly after the  
11 original designation is disclosed.

12 6.2 Meet and Confer. The parties must make every attempt to resolve any  
13 dispute regarding confidential designations without court involvement. Any  
14 motion regarding confidential designations or for a protective order must include a  
15 certification, in the motion or in a declaration or affidavit, that the movant engaged  
16 in a good faith meet and confer conference with other affected parties in an effort  
17 to resolve the dispute without court action. The certification must list the date,  
18 manner, and participants to the conference. A good faith effort to confer requires a  
19 face-to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
21 court intervention, the designating party may file and serve a motion to retain

1 confidentiality under Local Civil Rule 7.1. The burden of persuasion in any such  
2 motion shall be on the designating party. Frivolous challenges, and those made for  
3 an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens  
4 on other parties) may expose the challenging party to sanctions. All parties shall  
5 continue to maintain the material in question as confidential until the court rules on  
6 the challenge.

7 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
8 IN OTHER LITIGATION

9 If a party is served with a subpoena or a court order issued in other litigation  
10 that compels disclosure of any information or items designated in this action as  
11 “CONFIDENTIAL,” that party must:

- 12 (a) promptly notify the designating party in writing and include a copy of  
13 the subpoena or court order;
- 14 (b) promptly notify in writing the party who caused the subpoena or order  
15 to issue in the other litigation that some or all of the material covered by the  
16 subpoena or order is subject to this agreement. Such notification shall  
17 include a copy of this agreement; and
- 18 (c) cooperate with respect to all reasonable procedures sought to be  
19 pursued by the designating party whose confidential material may be  
20 affected.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL



1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
2 confidential material to any person or in any circumstance not authorized under  
3 this agreement, the receiving party must immediately (a) notify in writing the  
4 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
5 all unauthorized copies of the protected material, (c) inform the person or persons  
6 to whom unauthorized disclosures were made of all the terms of this agreement,  
7 and (d) request that such person or persons execute the “Acknowledgement and  
8 Agreement to Be Bound” that is attached hereto as **Exhibit A**.

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
10 PROTECTED MATERIAL

11 When a producing party gives notice to receiving parties that certain  
12 inadvertently produced material is subject to a claim of privilege or other  
13 protection, the obligations of the receiving parties are those set forth in Federal  
14 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
15 whatever procedure may be established in an e-discovery order or agreement that  
16 provides for production without prior privilege review. Parties shall confer on an  
17 appropriate non-waiver order under Fed. R. Evid. 502.

18 10. NON-TERMINATION AND RETURN OF DOCUMENTS

19 Within 60 days after the termination of this action, including all appeals,  
20 each receiving party must return all confidential material to the producing party,  
21 including all copies, extracts and summaries thereof. Alternatively, the parties  
may agree upon appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival  
2 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
3 correspondence, deposition and trial exhibits, expert reports, attorney work  
4 product, and consultant and expert work product, even if such materials contain  
5 confidential material.

6 The confidentiality obligations imposed by this agreement shall remain in  
7 effect until a designating party agrees otherwise in writing or a court orders  
8 otherwise.

9 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**  
10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the  
12 production of any documents in this proceeding shall not, for the purposes of this  
13 proceeding or any other proceeding in any other court, constitute a waiver by the  
14 producing party of any privilege applicable to those documents, including the  
15 attorney-client privilege, attorney work-product protection, or any other privilege  
16 or protection recognized by law.

17 The District Court Clerk is hereby directed to enter this Order and provide  
18 copies to counsel.

19 **DATED** July 30, 2018.

20 *s/ Rosanna Malouf Peterson*  
21 ROSANNA MALOUF PETERSON  
United States District Court

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under  
5 the penalty of perjury that I have read in its entirety and understand the Stipulated  
6 Protective Order that was issued by the United States District Court for the Western  
7 District of Washington on \_\_\_\_\_ [date] in the case of *Shaw v. American*  
8 *Family*, USDC Cause No. 2:17-cv-00432-RMP. I agree to comply with and to be  
9 bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment  
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
12 any information or item that is subject to this Stipulated Protective Order to any  
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court  
15 for the Eastern District of Washington for the purpose of enforcing the terms of this  
16 Stipulated Protective Order, even if such enforcement proceedings occur after the  
17 termination of this action.

18 Date: \_\_\_\_\_

19 City and State where sworn and signed: \_\_\_\_\_

20 Printed name: \_\_\_\_\_

21 Signature: \_\_\_\_\_