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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MATTHEW L. LEBSACK,

Plaintiff,

v.

UNION PACIFIC RAILROAD
COMPANY, a Delaware corporation,

Defendant.

Case No. 2:18-CV-0019-TOR

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

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- 1 a. Any and all documents referring or related to confidential and
2 proprietary human resources or business information; financial
3 records of the parties; compensation of Defendant's current or
4 former personnel; policies, procedures or training materials of
5 Defendant; or Defendant's organizational structure;
- 6 b. Any documents from the personnel, medical or workers'
7 compensation file of any current or former employee or contractor;
- 8 c. Any documents relating to the medical or health information of any
9 of Defendant's current or former employees or contractors;
- 10 d. Any portions of depositions (audio or video) where Confidential
11 Information is disclosed or used as exhibits.

12 3. SCOPE

13 The protections conferred by this agreement cover not only confidential material
14 (as defined above), but also (1) any information copied or extracted from confidential
15 material; (2) all copies, excerpts, summaries, or compilations of confidential material;
16 and (3) any testimony, conversations, or presentations by parties or their counsel that
17 might reveal confidential material.

18 However, the protections conferred by this agreement do not cover information
19 that is in the public domain or becomes part of the public domain through trial or
20 otherwise.

21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is
23 disclosed or produced by another party or by a non-party in connection with this case
24 only for prosecuting, defending, or attempting to settle this litigation. Confidential
25 material may be disclosed only to the categories of persons and under the conditions
26 described in this agreement. Confidential material must be stored and maintained by a
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1 receiving party at a location and in a secure manner that ensures that access is limited
2 to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

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

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

13 (c) experts and consultants to whom disclosure is reasonably necessary
14 for this litigation and who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A);

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

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party retaining the
19 copy or imaging service instructs the service not to disclose any confidential material
20 to third parties and to immediately return all originals and copies of any confidential
21 material;

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

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

3 4.3 Filing Confidential Material. Before filing confidential material or
4 discussing or referencing such material in court filings, the filing party shall confer
5 with the designating party to determine whether the designating party will remove the
6 confidential designation, whether the document can be redacted, or whether a motion
7 to seal or stipulation and proposed order is warranted.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each party or non-party that designates information or items for protection under this
11 agreement must take care to limit any such designation to specific material that
12 qualifies under the appropriate standards. The designating party must designate for
13 protection only those parts of material, documents, items, or oral or written
14 communications that qualify, so that other portions of the material, documents, items,
15 or communications for which protection is not warranted are not swept unjustifiably
16 within the ambit of this agreement.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this
18 agreement (see, *e.g.*, second paragraph of section 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 so designated before or when the material is
21 disclosed or produced.

22 (a) Information in documentary form: (*e.g.*, paper or electronic
23 documents and deposition exhibits, but excluding transcripts of depositions or other
24 pretrial or trial proceedings), the designating party must affix the word
25 “CONFIDENTIAL” to each page that contains confidential material. If only a portion
26 or portions of the material on a page qualifies for protection, the producing party also

1 must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in
2 the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the
4 parties and any participating non-parties must identify on the record, during the
5 deposition or other pretrial proceeding, all protected testimony, without prejudice to
6 their right to so designate other testimony after reviewing the transcript. Any party or
7 non-party may, within fifteen days after receiving the transcript of the deposition or
8 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
9 confidential. If a party or non-party desires to protect confidential information at trial,
10 the issue should be addressed during the pre-trial conference.

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive the
18 designating party’s right to secure protection under this agreement for such material.
19 Upon timely correction of a designation, the receiving party must make reasonable
20 efforts to ensure that the material is treated in accordance with the provisions of this
21 agreement.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any party or non-party may challenge a
24 designation of confidentiality at any time. Unless a prompt challenge to a designating
25 party’s confidentiality designation is necessary to avoid foreseeable, substantial
26 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
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1 litigation, a party does not waive its right to challenge a confidentiality designation by
2 electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any
4 dispute regarding confidential designations without court involvement. Any motion
5 regarding confidential designations or for a protective order must include a
6 certification, in the motion or in a declaration or affidavit, that the movant has engaged
7 in a good faith meet and confer conference with other affected parties in an effort to
8 resolve the dispute without court action. The certification must list the date, manner,
9 and participants to the conference. A good faith effort to confer requires a face-to-face
10 meeting or a telephone conference.

11 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
12 court intervention, the designating party may file and serve a motion to retain
13 confidentiality. The burden of persuasion in any such motion shall be on the
14 designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*,
15 to harass or impose unnecessary expenses and burdens on other parties) may expose
16 the challenging party to sanctions. All parties shall continue to maintain the material
17 in question as confidential until the court rules on the challenge.

18 7. 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
21 compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that party must:

23 (a) promptly notify the designating party in writing and include a copy
24 of the subpoena or court order;

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

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

16 When a producing party gives notice to receiving parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the receiving parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
20 may be established in an e-discovery order or agreement that provides for production
21 without prior privilege review. The parties agree to the entry of a non-waiver order
22 under Fed. R. Evid. 502(d) as set forth herein.

23 10. NON TERMINATION AND RETURN OF DOCUMENTS

24 Within 60 days after the termination of this action, including all appeals, each
25 receiving party must return all confidential material to the producing party, including
26 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
27 appropriate methods of destruction.
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1 Notwithstanding this provision, counsel are entitled to retain one archival copy
2 of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain confidential
5 material.

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

8 Nothing in this Order shall be construed as an admission as to the relevance,
9 authenticity, foundation or admissibility of any document, material, transcript, or other
10 information.

11 Nothing in the Protective Order shall be deemed to preclude any party from
12 seeking and obtaining, on an appropriate showing, a modification of this Order.

13 Once executed by all parties, the Stipulation shall be by treated by the Parties as
14 an Order of Court until it is formally approved by the Court.

15 IT IS SO STIPULATED:

16 DATED: September 26, 2018

17 ROSSI VUCINOVICH, PC
18 s/James Vucinovich
19 James K. Vucinovich, WSB 29199
jvucinovich@rvflegal.com
Counsel for Plaintiff

FISHER & PHILLIPS LLP
s/Clarence Belnavis
Clarence M. Belnavis, WSB 36681
cbelnavis@fisherphillips.com
Margaret A. Burnham, WSB 47860
mburnham@fisherphillips.com
Attorneys for Defendant

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22 PURSUANT TO STIPULATION, IT IS SO ORDERED

23 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
24 production of any documents in this proceeding shall not, for the purposes of this
25 proceeding or any other proceeding in any other court, constitute a waiver by the
26 producing party of any privilege applicable to those documents, including the attorney-

1 client privilege, attorney work-product protection, or any other privilege or protection
2 recognized by law.

3 DATED October 12, 2018.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on _____ [date] in the case of *Lebsack v. Union Pacific
Railroad Company*, Case No. 2:18-cv-0019-TOR. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

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

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____