

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

Sep 24, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DIANE YOUNG, individually

Plaintiff,

v.

THE STANDARD FIRE
INSURANCE COMPANY, a foreign
insurance company,

Defendant.

NO: 2:18-CV-31-RMP

ORDER GRANTING STIPULATED
MOTIONS FOR PROTECTIVE
ORDER AND TO EXPEDITE

BEFORE THE COURT are the parties' stipulated motion for entry of a protective order, ECF No. 48, and accompanying stipulated motion to expedite hearing of the same, ECF No. 49. Having reviewed the protective order and the remaining record, the Court finds good cause to grant the stipulated motions on an expedited basis and enter the agreed-upon protective order.

Accordingly, **IT IS HEREBY ORDERED** that the parties' stipulated motions for protective order, **ECF No. 48**, and to expedite hearing of the same, **ECF No. 49**, are **GRANTED**. The protective order in effect is set forth below.

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1 **STIPULATED PROTECTIVE ORDER**

2 **I. PURPOSES AND LIMITATIONS**

3 Plaintiff has requested discovery from Defendant The Standard Fire
4 Insurance Company (herein after “Defendant”) that Defendant believes is likely to
5 involve production of confidential, proprietary, or private information for which
6 special protection may be warranted. Accordingly, the parties hereby stipulate to
7 and petition the court to enter the following Stipulated Protective Order. It does
8 not confer blanket protection on all disclosures or responses to discovery, the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles, and it does not presumptively entitle parties to file confidential
12 information under seal.

13 **II. “CONFIDENTIAL” MATERIAL**

14 “Confidential” documents shall mean documents or information produced
15 or disclosed within any proceeding, formal or informal, including but not limited
16 to, written discovery, depositions, affidavits, document production and expert
17 disclosures, by any of the parties to this action or by any non-party witness, which
18 a Party designates as “Confidential.” For purposes of this Order, Confidential
19 information may include, but is not limited to, documents that the designating
20 party contends contain trade secrets, proprietary or commercially sensitive
21 information, employee records and personnel files, and any other information

1 subject to specific privacy rights or other specific grounds recognized at law as
2 justifying non-disclosure, including but not limited to redaction of an employee's
3 Social Security Information and health care information. This Order and the
4 definition of "Confidential" does not constitute an agreement or stipulation that
5 any specific documents are admissible, and all rights and objections thereto are
6 reserved. Not all documents are Confidential; however, a producing Party reserves
7 the right to evaluate such documents and to designate such documents or portions
8 thereof should they contain Confidential information within. Confidential
9 information shall be revealed only to: (a) the Court, the Court's staff and any
10 mediators, arbitrators, and their staff; (b) the parties and their officers, employees,
11 and agents who are providing assistance to counsel in this action (including in-
12 house counsel participating in the defense of this action), and any persons joined as
13 parties in the future; (c) the parties' attorneys of record and those attorneys'
14 associates, assistants, employees, and vendors; (d) consultants, technical experts,
15 expert witnesses, potential fact witnesses, and agents involved in the preparation of
16 this action who have signed the "Agreement to be Bound by Confidentiality
17 Agreement" attached hereto as Exhibit A; (e) insurers or representatives of the
18 parties who have signed the "Agreement to be Bound by Confidentiality
19 Agreement" attached hereto as Exhibit A; and (f) court reporters, their transcribers,
20 assistants, and employees. Documents which a Party or its legal counsel has
21

1 caused or permitted to enter the public domain through means other than litigation
2 shall not be deemed Confidential.

3 **III. SCOPE**

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

11 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

12 A. Basic Principles. A receiving party may use confidential material that is
13 disclosed or produced by another party or by a non-party in connection with this
14 case only for prosecuting, defending, or attempting to settle this litigation.

15 Confidential material may be disclosed only to the categories of persons and under
16 the conditions described in this agreement. Confidential material must be stored
17 and maintained by a receiving party at a location and in a secure manner that
18 reasonably ensures that access is limited to the persons authorized under this
19 agreement.

1 B. Disclosure of “CONFIDENTIAL” Information or Items. Unless

2 otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (i) the parties who are named parties in the above caption of the subject
5 lawsuit to which this Stipulated Protective Order applies;

6 (ii) 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
8 information for this litigation;

9 (iii) experts and consultants to whom disclosure is reasonably necessary for
10 this litigation and who have signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A);

12 (iv) the Court, court personnel, and court reporters and their staff;

13 (v) copy or imaging services retained by counsel to assist in the duplication
14 of confidential material, provided that counsel for the party retaining the copy or
15 imaging service instructs the service not to disclose any confidential material to
16 third parties and to immediately return all originals and copies of any confidential
17 material;

18 (vi) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Acknowledgment and Agreement
20 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
21 ordered by the court. Pages of transcribed deposition testimony or exhibits to

1 depositions that reveal confidential material must be designated as
2 CONFIDENTIAL and may not be disclosed to anyone except as permitted under
3 this agreement;

4 (vii) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 C. Filing Confidential Material.

7 Any party including materials designated CONFIDENTIAL in any pleading,
8 motion, deposition transcript or other paper filed with the Clerk of this Court shall,
9 at that party's option, either:

10 (a) provide five court days advance written notice to the designating party of
11 the intent to submit CONFIDENTIAL materials, identifying the specific materials
12 to be filed and the date of the filing so that the designating party may file a motion
13 to seal and provide redacted versions of the CONFIDENTIAL materials to the
14 non-designating party; if the designating party so moves before the date of filing,
15 then the non-designating party shall file the redacted versions of the
16 CONFIDENTIAL materials with his or her public court filing (with an unredacted
17 copy provided to chambers in camera) or, if necessary, file CONFIDENTIAL
18 documents under seal; or

19 (b) file a separate motion or stipulation seeking an order from the Court
20 determining whether the CONFIDENTIAL material may be maintained under seal

1 so that the Court can make particular findings justifying the limitation on public
2 access as may be appropriate.

3 The burden is on the designating party to provide the Court with the
4 information needed to determine whether all, a portion, or none of the document
5 may be filed under seal. Court findings and conclusions reflecting the same and
6 authorizing any sealing or redaction must also be filed by the designating party.
7 Consistent with this paragraph, a filing party's exercise of the option to file a
8 separate, non-stipulated motion seeking a Court order determining whether
9 CONFIDENTIAL material may be maintained under seal does not constitute
10 assent to the designating party's CONFIDENTIAL designations or the issue of
11 whether any or all such materials should be maintained under seal.

12 **V. DESIGNATING PROTECTED MATERIAL**

13 **A. Exercise of Restraint and Care in Designating Material for Protection.**

14 Each party or non-party that designates information or items for protection under
15 this agreement must take care to limit any such designation to specific material that
16 qualifies under the appropriate standards. The designating party must designate for
17 protection only those parts of material, documents, items, or oral or written
18 communications that qualify, so that other portions of the material, documents,
19 items, or communications for which protection is not warranted are not swept
20 unjustifiably within the ambit of this agreement. Mass, indiscriminate, or
21 routinized designations are prohibited. Designations that are shown to be clearly

1 unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily
2 encumber or delay the case development process or to impose unnecessary
3 expenses and burdens on other parties) expose the designating party to sanctions.
4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 B. Manner and Timing of Designations. Except as otherwise provided in this
8 agreement (see, *e.g.*, second paragraph of section V.B.(i) below), or as otherwise
9 stipulated or ordered, disclosure or discovery material that qualifies for protection
10 under this agreement must be clearly so designated before or when the material is
11 disclosed or produced.

12 (i) Information in documentary form: (*e.g.*, paper or electronic documents
13 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
14 trial proceedings), the designating party must affix the word "CONFIDENTIAL"
15 to each page that contains confidential material. If only a portion or portions of the
16 material on a page qualifies for protection, the producing party also must clearly
17 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
18 margins).

19 (ii) Testimony given in deposition or in other pretrial or trial proceedings:
20 the parties must identify on the record, during the deposition, hearing, or other
21 proceeding, all protected testimony, without prejudice to their right to so designate

1 other testimony after reviewing the transcript. Any party or non-party may, within
2 fifteen days after receiving a deposition transcript, designate portions of the
3 transcript, or exhibits thereto, as confidential.

4 (iii) Other tangible items: the producing party must affix in a prominent
5 place on the exterior of the container or containers in which the information or
6 item is stored the word "CONFIDENTIAL." If only a portion or portions of the
7 information or item warrant protection, the producing party, to the extent
8 practicable, shall identify the protected portion(s).

9 C. Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the designating party's right to secure protection under this agreement for such
12 material. Upon timely correction of a designation, the receiving party must make
13 reasonable efforts to ensure that the material is treated in accordance with the
14 provisions of this agreement. Corrective designations made fifty days or more
15 after the information or materials at issue are disclosed to the opposing party are
16 subject to a rebuttable presumption of untimeliness. The designating party shall
17 bear the burden of demonstrating circumstances justifying the presumptively
18 untimely designations.

19 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 A. Timing of Challenges. Any party or non-party may challenge a
21 designation of confidentiality at any time. Unless a prompt challenge to a

1 designating party's confidentiality designation is necessary to avoid foreseeable,
2 substantial unfairness, unnecessary economic burdens, or a significant disruption
3 or delay of the litigation, a party does not waive its right to challenge a
4 confidentiality designation by electing not to mount a challenge promptly after the
5 original designation is disclosed.

6 B. Meet and Confer. The parties must make every attempt to resolve any
7 dispute regarding confidential designations without court involvement. Any
8 motion regarding confidential designations or for a protective order must include a
9 certification, in the motion or in a declaration or affidavit, that the movant has
10 engaged in a good faith meet and confer conference with other affected parties in
11 an effort to resolve the dispute without court action. The certification must list the
12 date, manner, and participants to the conference. A good faith effort to confer
13 requires a face-to-face meeting or a telephone conference. If the parties are unable
14 to agree upon the confidentiality of a document that has been designated as
15 "Confidential", then the party which wants to introduce the document into
16 evidence bears the burden of establishing the appropriate designation for that
17 document.

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

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

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1 (i) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (ii) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena
5 or order is subject to this agreement. Such notification shall include a copy of this
6 agreement; and

7 (iii) cooperate with respect to all reasonable procedures sought to be pursued
8 by the designating party whose confidential material may be affected.

9 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

18 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR 19 OTHERWISE PROTECTED MATERIAL**

20 When a producing party gives notice to receiving parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
protection, the obligations of the receiving parties are those set forth in CR
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1 26(b)(5). This provision is not intended to modify whatever procedure may be
2 established in an e-discovery order or agreement that provides for production
3 without prior privilege review. The parties shall confer on an appropriate non-
4 waiver order under Fed. R. Evid. Rule 502.

5 **X. NON TERMINATION AND RETURN OF DOCUMENTS**

6 Within sixty days after the termination of this action, including all appeals,
7 and upon written request of the producing party, each receiving party must return
8 or destroy all confidential material including all copies, extracts and summaries
9 thereof. Notwithstanding this provision, counsel are entitled to retain one archival
10 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
11 correspondence, deposition and trial exhibits, expert reports, attorney work
12 product, and consultant and expert work product, even if such materials contain
13 confidential material. The confidentiality obligations imposed by this agreement
14 shall remain in effect until a designating party agrees otherwise in writing or a
15 court orders otherwise.

16 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
17 Order and provide copies to counsel.

18 **DATED** September 24, 2018.

19
20 *s/ Rosanna Malouf Peterson*
21 ROSANNA MALOUF PETERSON
United States District Judge