

The Honorable Ricardo S Martinez

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MIKE HOWISEY, as attorney in fact for
WALLACE E. HOWISEY, an incapacitated
person,

Plaintiff,

v.

TRANSAMERICA LIFE INSURANCE
COMPANY, a foreign corporation organized
under the laws of the State of Iowa,

Defendant.

NO. 2:17-cv-00009-RSM

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

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include, but is not limited to, the following documents and
3 tangible things produced or otherwise exchanged if they are so designated:

4 Transamerica’s proprietary forms, documents, records, competitive data, and statistical
5 information related to its long term care insurance policies, rates, sales, administration, and
6 claims practices, which are not publicly available;

7 Transamerica’s employment and training policies, procedures and records;

8 Any Transamerica records that relate to consumers other than the named plaintiff;

9 Draft and executed contracts between Transamerica and its vendors or service providers
10 which are not in the public domain;

11 Documents containing sensitive personal financial or medical information about the
12 plaintiff;

13 Documents produced or exchanged by third parties, including but not limited to Aegis
14 of Kirkland and National Elder Care Referral Systems, Inc. d/b/a “CareScout”; and

15 Similar categories of documents that may be identified during the discovery period.

16 3. SCOPE

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

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

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1 Basic Principles. A receiving party may use confidential material that is
26 disclosed or produced by another party or by a non-party in connection with this case only for

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

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

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

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

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

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

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

23 (f) during their depositions, witnesses in the action to whom disclosure is
24 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
26 transcribed deposition testimony or exhibits to depositions that reveal confidential material

1 must be separately bound by the court reporter and may not be disclosed to anyone except as
2 permitted under this agreement;

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

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
14 party or non-party that designates information or items for protection under this agreement must
15 take care to limit any such designation to specific material that qualifies under the appropriate
16 standards. The designating party must designate for protection only those parts of material,
17 documents, items, or oral or written communications that qualify, so that other portions of the
18 material, documents, items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this agreement.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
21 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
22 unnecessarily encumber or delay the case development process or to impose unnecessary
23 expenses and burdens on other parties) expose the designating party to sanctions.

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

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, disclosure or discovery material that qualifies for protection under this agreement must
4 be clearly so designated before or when the material is disclosed or produced.

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

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

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

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the designating party’s
24 right to secure protection under this agreement for such material. Upon timely correction of a
25 designation, the receiving party must make reasonable efforts to ensure that the material is
26 treated in accordance with the provisions of this agreement.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

15 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
16 intervention, the designating party may file and serve a motion to retain confidentiality under
17 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
18 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
19 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
20 other parties) may expose the challenging party to sanctions. All parties shall continue to
21 maintain the material in question as confidential until the court rules on the challenge.

22 7. SPECIFIC PROVISIONS REGARDING PROTECTED HEALTH INFORMATION

23 7.1 Qualified Protective Order. Notwithstanding any other terms or provisions of
24 this Stipulated Protective Order, the following paragraphs shall govern all documents and
25 information falling within the definition of Protected Health Information (or "PHI") that is
26 produced or supplied by any non-party insurer, hospital, medical provider, or other non-party.

1 This Stipulated Protective Order constitutes a “qualified protective order” as defined in 45
2 C.F.R. § 164.512(e)(1)(v). Subject to compliance with the terms of this Protective Order and
3 HIPAA, any non-party may disclose PHI to any requesting party.

4 7.2 Protected Personal Health Information. This Stipulated Protective Order applies
5 to and restricts the further use and disclosure of all PHI as defined in HIPAA, including but not
6 limited to, individually identifiable health information, including demographic information,
7 relating to either (a) the past, present or future physical or mental condition of an individual;
8 (b) the provision of health care to an individual; or (c) the past, present or future payment for
9 health care provided to an individual which identifies the individual or with respect to which
10 there is a reasonable basis to believe the information could be used to identify the individual.

11 7.3 Use of PHI Limited to this Action. Any party, witness, expert, attorney or other
12 person or entity to whom PHI is disclosed by any non-party pursuant to this Stipulated
13 Protective Order for purposes of prosecuting or defending this action is specifically prohibited
14 from using or disclosing the PHI disclosed by the non-party for any purpose other than the
15 prosecution or defense of this action and is required to return or destroy any PHI that has been
16 disclosed by any non-party (including all copies made) at the termination of this action as
17 required by HIPAA.

18 Except as otherwise permitted under this Protective Order, upon further order of the Court, or
19 upon grounds otherwise allowed under HIPAA, PHI disclosed by non-parties in connection
20 with this action shall not be disclosed to any individuals or entities not involved in this action.
21 Disclosure of PHI from a non-party to individuals or entities involved in this action shall be
22 subject to Paragraph 4.2 of this Stipulated Protective Order.

23 7.4 Objections Preserved. Nothing herein shall prevent any party or non-party from
24 objecting to any subpoena or discovery request on grounds other than HIPAA. This Protective
25 Order shall not be construed to restrict or limit the use, dissemination, or disposition by the
26 Designator of its own information that it designates as “CONFIDENTIAL.”

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

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

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

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

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

13 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

1 order or agreement that provides for production without prior privilege review. The parties
2 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

3 11. NON TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving
5 party must return or destroy all confidential material to the producing party, including all copies,
6 extracts and summaries thereof.

7 The parties recognize that electronically produced information (ESI) results in copies
8 made due to back up and archive protocols and no party can guaranty that every copy has been
9 found and deleted. Therefore, the parties commit to use best reasonable efforts to delete
10 confidential information instead of returning it. The parties will use best reasonable efforts to
11 delete confidential information from Concordance, Summation, Relativity or similar document
12 review/management programs and will use best reasonable efforts to destroy any hard copies
13 made of confidential information, as well as confidential ESI stored in other locations.

14 Notwithstanding this provision, counsel are entitled to retain archival copies of all
15 documents filed with the court, or used at trial or deposition, as well as hearing transcripts,
16 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
17 consultant and expert work product, even if such materials contain confidential material.

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

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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5 DATED: 7/24/17

/s/ Randall Johnson

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16 DATED: 7/24/17

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Attorneys for Defendant Transamerica

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

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

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8 DATED: July 26, 2017

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Western District of Washington on [date]
7 in the case of *Howisey v. Transamerica Life Insurance Company*, Case No. 2:17-cv-00009 RSM
8 (W.D. Wash.). I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order and I understand and acknowledge that failure to so comply could expose me
10 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
11 disclose in any manner any information or item that is subject to this Stipulated Protective Order
12 to any person or entity except in strict compliance with the provisions of this Order.

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

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____