



1 would be harmed by disclosure. Plaintiffs, for their part, vaguely assert that they owe duties of  
2 confidentiality to the insured, but make no attempt to identify information in the documents that  
3 reflects the insured's confidences.

4 The protective order entered in this litigation allows a claim file to be designated as  
5 confidential only if it contains confidential information regarding the insured's defense of the  
6 claims against it. Dkt. # 33 at 2.<sup>1</sup> Rather than make such a showing, plaintiffs declare that they  
7 are not in a position to decide what the insured would view as confidential and ask that the  
8 documents be sealed to avoid any chance of an unwarranted disclosure. Having reviewed the  
9 documents, the Court finds that plaintiffs have not met their burden. The allegations of the  
10 underlying complaint against the insured are public knowledge, as is the fact that the insured and  
11 its assignee have made claims for coverage. Plaintiffs' claims handling activities, including its  
12 interpretation of the policy terms, do not reflect confidential information of the insured and are  
13 highly relevant to the counterclaims asserted against plaintiffs in this litigation. Defendant's  
14 request for leave to file exhibits under seal is therefore denied, as is plaintiffs' alternative request  
15 to compel the substitution of stipulations for the documentary evidence.

16 With regards to plaintiffs' request that additional exhibits attached to the Declaration of  
17 Timothy B. Fitzgerald (Dkt. # 36) be filed under seal, the only justification provided is that  
18 plaintiffs produced the documents and marked them as confidential. A party's unilateral  
19 designation of a document as confidential does not, in and of itself, justify a seal under LCR  
20 5(g)(2). Plaintiffs have not established that the public's right of access should give way.

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25 <sup>1</sup> The Court previously rejected a proposed protective order that would have allowed the parties  
26 to designate "claims files" as confidential without any showing that the files held confidences, revealed  
trade secrets, or are otherwise privileged. Dkt. # 26.

1 For all of the foregoing reasons, the parties' requests to seal (Dkt. # 34 and Dkt. # 43) are  
2 DENIED. The Clerk of Court is directed to unseal Dkt. # 37.

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4 Dated this 10th day of April, 2018.

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6 Robert S. Lasnik

7 United States District Judge  
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