

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SNOHOMISH COUNTY PUBLIC
HOSPITAL DISTRICT NO. 1, a
Washington Public Hospital District, d/b/a/
EVERGREENHEALTH MONROE,

Plaintiffs,

vs.

HARTFORD FIRE INSURANCE COMPANY,
a Connecticut corporation,

Defendant.

No. 2:17-cv-01456

**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

STIPULATED PROTECTIVE ORDER – PAGE 1

CAUSE NO. 2:17-CV-01456

2018088 / 462.0002

FORSBERG & UMLAUF, P.S.
ATTORNEYS AT LAW
901 FIFTH AVENUE • SUITE 1400
SEATTLE, WASHINGTON 98164-1039
(206) 689-8500 • (206) 689-8501 FAX

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

3 **2. "CONFIDENTIAL" MATERIAL**

4 "Confidential" material shall include the following documents and tangible things
5 produced or otherwise exchanged: Underwriting files and materials, including but not limited
6 to premium, rating information, underwriting policies and guidelines, documents relating to
7 marketing, sales, claims handling policies and procedures, and documents relating to insureds
8 and prospective insureds other than Evergreen Health Monroe.

9 **3. SCOPE**

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

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

17 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

18 **4.1 Basic Principles.** A receiving party may use confidential material that is
19 disclosed or produced by another party or by a non-party in connection with this case only for
20 prosecuting, defending, or attempting to settle this litigation. Confidential material may be
21 disclosed only to the categories of persons and under the conditions described in this
22 agreement. Confidential material must be stored and maintained by a receiving party at a
23

1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

3 **4.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 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 for this
8 litigation;

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

13 (c) experts and consultants to whom disclosure is reasonably necessary for
14 this litigation and who have provided written acknowledgment that they are bound by the terms
15 of this Stipulated Protective Order;

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 duplication
18 of confidential material, provided that counsel for the party retaining the copy or imaging
19 service instructs the service not to disclose any confidential material to third parties and to
20 immediately return all originals and copies of any confidential material;

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have provided written acknowledgment that they are bound by
23 the terms of this Stipulated Protective Order, unless otherwise agreed by the designating party

1 or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions
2 that reveal confidential material must be separately bound by the court reporter and may not be
3 disclosed to anyone except as permitted under this agreement;

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

13 **5. DESIGNATING PROTECTED MATERIAL**

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

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
23

1 unnecessarily encumber or delay the case development process or to impose unnecessary
2 expenses and burdens on other parties) expose the designating party to sanctions.

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

6 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this
7 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
8 ordered, disclosure or discovery material that qualifies for protection under this agreement must
9 be clearly so designated before or when the material is disclosed or produced.

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

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

23

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

5 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure
6 to designate qualified information or items does not, standing alone, waive the designating
7 party's right to secure protection under this agreement for such material. Upon timely
8 correction of a designation, the receiving party must make reasonable efforts to ensure that the
9 material is treated in accordance with the provisions of this agreement.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

1 **6.3 Judicial Intervention.** If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under
3 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
4 of persuasion in any such motion shall be on the designating party. Frivolous challenges, and
5 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and
6 burdens on other parties) may expose the challenging party to sanctions. All parties shall
7 continue to maintain the material in question as confidential until the court rules on the
8 challenge.

9 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
10 **OTHER LITIGATION**

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

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

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

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

21 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
23 confidential material to any person or in any circumstance not authorized under this agreement,

1 the receiving party must immediately (a) notify in writing the designating party of the
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
3 protected material, (c) inform the person or persons to whom unauthorized disclosures were
4 made of all the terms of this agreement, and (d) request that such person or persons provide
5 written acknowledgment that they are bound by the terms of this Stipulated Protective Order.

6 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
7 **PROTECTED MATERIAL**

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

14 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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

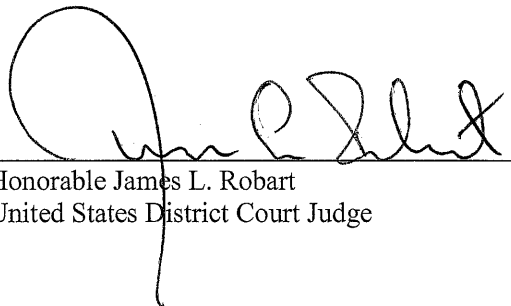
IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 02/07/2018 /s/ Greg D. Pendleton
Attorneys for Plaintiff

DATED: 02/07/2018 /s/ Matthew S. Adams
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

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

DATED: 7 February 2018 
Honorable James L. Robart
United States District Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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 Western District of Washington on [date]
in the case of *Snohomish County Public Hospital District No. 1 d/b/a/ Evergreen v. Hartford*
Fire Insurance Company, Western District of Washington Case No. 2:17-cv-01456-JLR. 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.

February 7, 2018
[Handwritten Signature]

I further agree to submit to the jurisdiction of the United States District Court for the
Western 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: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing MODEL STIPULATED PROTECTIVE ORDER on the following individuals in the manner indicated:

Mr. Greg Pendleton
Mr. Dale Kingman
Gordon Tilden Thomas & Cordell LLP
1001 Fourth Ave., Suite 4000
Seattle, WA 98154-1007
(X) Via ECF

SIGNED this 7th day of February, 2018, at Seattle, Washington.

/s/ Honor M. McQueen
Honor M. McQueen