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HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUSAN LASH,  
  
Plaintiff,  
  
v.  
  
STANDARD INSURANCE COMPANY,  
  
Defendant.

Case No. 2:17-cv-01646-JLR  
  
STIPULATED PROTECTIVE ORDER  
[PROPOSED]

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 the following documents and tangible things  
3 produced or otherwise exchanged:

- 4 a. Information regarding Standard Insurance Company’s (“Standard”) policies,  
5 procedures and manuals, including but not limited to claims handling methods and  
6 training provided by Standard to its employees;
- 7 b. Information regarding the business relationship between Standard and outside medical  
8 vendors and service providers utilized by Standard in connection with disability claims;  
9 and
- 10 c. Personnel files and related materials.

11 3. SCOPE

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

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

18 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

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

25 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
26 by the court or permitted in writing by the designating party, a receiving party may disclose any  
27 confidential material only to:

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

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

7 (c) experts and consultants to whom disclosure is reasonably necessary for this  
8 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

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

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

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

22 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
23 referencing such material in court filings, the filing party shall confer with the designating party  
24 to determine whether the designating party will remove the confidential designation, whether the  
25 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
26 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards  
27 that will be applied when a party seeks permission from the court to file material under seal.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
3 or non-party that designates information or items for protection under this agreement must take  
4 care to limit any such designation to specific material that qualifies under the appropriate  
5 standards. The designating party must designate for protection only those parts of material,  
6 documents, items, or oral or written communications that qualify, so that other portions of the  
7 material, documents, items, or communications for which protection is not warranted are not swept  
8 unjustifiably within the ambit of this agreement.

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

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

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
19 be clearly so designated before or when the material is disclosed or produced.

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

26 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
27 and any participating non-parties must identify on the record, during the deposition or other pretrial

1 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
2 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
3 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
4 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
5 at trial, the issue should be addressed during the pre-trial conference.

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
11 designate qualified information or items does not, standing alone, waive the designating party's  
12 right to secure protection under this agreement for such material. Upon timely correction of a  
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
14 in accordance with the provisions of this agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

22 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
23 regarding confidential designations without court involvement. Any motion regarding confidential  
24 designations or for a protective order must include a certification, in the motion or in a declaration  
25 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
26 affected parties in an effort to resolve the dispute without court action. The certification must list  
27

1 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
2 to-face meeting or a telephone conference.

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

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

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

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

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

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

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23         If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
24 material to any person or in any circumstance not authorized under this agreement, the receiving  
25 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
26 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
27 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,

1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

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

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: February 27, 2018

/s/ Mel Crawford (with telephonic authority)  
Mel Crawford, WSBA No. 22930  
Attorneys for Plaintiff


DATED: February 27, 2018

/s/ Laura T. Morse  
Gabriel Baker, WSBA No. 28473  
Laura T. Morse, WSBA No. 34532  
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: 28 Feb. 2018



Honorable James L. Robart  
United States District Court 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 Western District of Washington on [date] in the  
case of *Susan Lash v. Standard Insurance Company*, Case No. 2:17-cv-01646 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.

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: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

Pursuant to RCW 9A.72.085, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 27th day of February, 2018, the document attached hereto was delivered to the below counsel in the manner indicated.

Mel Crawford  
Law Office of Mel Crawford  
9425 35<sup>th</sup> Avenue N.E., Suite C  
Seattle, WA 98115  
melcrawford@melcrawfordlaw.com

- by CM/ECF
- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

DATED this 27th day of February, 2018.

By /s/ Laura T. Morse  
Laura T. Morse