

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
)
v.)
)
ALLSTATE INSURANCE COMPANY,)
)
Defendant.)
_____)

CIVIL ACTION NO. 4:04CV1359

STIPULATION AND ORDER GOVERNING PROTECTION
AND EXCHANGE OF CONFIDENTIAL MATERIAL

This Stipulation and Order Governing Protection and Exchange of Confidential Material (“Stipulation and Order”) is entered into by and among the United States Equal Employment Opportunity Commission (“EEOC”), Allstate Insurance Company (“Allstate”), and their respective counsel. Hereinafter, the EEOC and Allstate, or any of them, may be referred to individually as a “party” or collectively as the “parties.” The above-captioned cases may be referred to collectively as the “Litigation.”

1. **Scope of Stipulation.** This Stipulation and Order will govern the handling of all documents, information and material produced by the parties through discovery in the Litigation (“produced material”) and designated as “confidential material” (Confidential Material”) by the producing party pursuant to this Stipulation and Order. The provisions of this Stipulation and Order do not apply to documents, information and material which are lawfully obtained by or come into the possession of a party or any other person through means other than discovery (“non-produced material”),

whether prior or subsequent to the initiation of the Litigation, and regardless of whether such non-produced material, including an identical or non-identical copy thereof, also has been produced in the Litigation and designated as Confidential Material pursuant to this Stipulation and Order. For purposes of this Stipulation and Order, the term “produced materials” includes, but is not limited to, documents, tangible things, transcripts, recordings, photographs, electronic files, databases, and any other written, recorded or graphic matter produced by any party in response to discovery requests made by another party pursuant to the Federal Rules of Civil Procedure or otherwise. This Stipulation and Order also will govern the handling of documents and all other forms of recorded information containing or derived from the information disclosed in any produced material designated as Confidential Material.

2. **Confidential Material.** Confidential Material will include the following produced material that the producing party marks as confidential in accordance with this Stipulation and Order:

(a) All medical, financial, family, discipline or personnel-related information pertaining to Allstate’s former or current agents or employees, which may be deemed confidential for privacy reasons, including but not limited to:

- (i) workers’ compensation documents;
- (ii) medical records;
- (iii) documents regarding internal company investigations;
- (iv) payroll information;
- (v) wage information;
- (vi) expense reimbursement information;

(vii) other financial information, including but not limited to corporate or individual tax returns;

(viii) other proprietary business information, including but not limited to lists of existing or potential clients and customers, marketing materials and business plans; and

(ix) any EEOC investigative files.

(b) All documents which contain information of a proprietary, confidential or sensitive business nature, including, but not limited to:

(i) any financial information or data (whether electronic or otherwise) pertaining to the costs or projected costs of operating an Allstate agency, Allstate's agency system, Allstate's insurance and other businesses, or any division of Allstate, or the revenue, sales, or profits generated by an Allstate agency, including but not limited to labor costs and operating and other expenses.

(ii) any data (whether electronic or otherwise) reflecting payroll, reimbursement or other payment information and agent or employee numbers or other identifiers; and

(iii) information regarding the operation of Allstate's agency system, its insurance business, or any Allstate division or business, including but not limited to sales plans or procedures, agent or employee goals, operations or training manuals, product selection or merchandising, customer relations or legal issues, in the case of documents that are not otherwise privileged or protected from disclosure.

(c) Non-produced material shall not be deemed Confidential Material and is not otherwise subject to the provisions of this Stipulation and Order, even though other copies of such material may be produced in the Litigation by one or more parties, provided that such material is not obtained by fraud, deceit, theft, in contravention of an agreement regarding its confidentiality or restricting its distribution, or by some other improper means. Non-produced material shall remain subject to any confidentiality agreement, non-disclosure agreement, or any other restriction on its disclosure identified on the document or information or imposed as a condition of its initial disclosure to the parties or the source(s) from which the document was received. The parties acknowledge that there may be an obligation to preserve the confidentiality of certain trade secrets and other information deemed to be proprietary and confidential that is not otherwise lawfully available to the public.

3. **Designation of Produced Material as Confidential Material.**

(a) With respect to produced material that a party or its counsel may transmit directly to counsel for the other party, the following designations will apply:

(i) The nature and type of the producing party's electronic data and all information contained therein will be deemed Confidential Material; and

(ii) Any documents or files containing information as set forth in paragraph 2 above shall be marked or designated as Confidential Material by the producing party in accordance with the provisions of this

paragraph 3.

(b) With respect to produced material made available for inspection and copying at any location, the producing party will be entitled to mark or designate as Confidential Material any or all portions of the produced material at the time the other party requests copies of such produced material.

(c) A party may mark or otherwise designate as “highly sensitive” only those portions or parts of Confidential Material which, if revealed beyond counsel or other persons identified in paragraph 5(d) below, would cause irreparable injury to the producing party (“Highly Sensitive Material”).

(d) Documents or pages that a party wishes to mark or otherwise designate as Confidential Material or Highly Sensitive Material will bear a stamp on the face of the document so indicating, except as provided by paragraphs 3(f) and 3(g).

(e) The failure of the producing party to mark or designate any produced material as Confidential Material or Highly Sensitive Material at the time of production shall not preclude that party from designating such produced material as Confidential Material or Highly Sensitive Material at a later date. The parties agree that:

(i) this Stipulation and Order will govern the handling of the material upon receipt of written notice that produced material not previously marked or designated as Confidential material is being so designated;

(ii) the producing party shall undertake all reasonable steps

necessary to protect the confidentiality of such newly-designated material, including, but not limited to: (A) providing prompt written notice of the designation to all other parties; (B) producing additional copies of the produced material marked in accordance with paragraph 3(d) of this Stipulation and Order; and (C) identifying pleadings and other documents that should be re-filed under seal pursuant to paragraph 8(b)(i) of this Stipulation and Order; and

(iii) subject to the provisions of paragraph 8(b), and to the extent any produced material is used in this Litigation prior to designation as Confidential Material (*e.g.*, filed with the Court not under seal) or otherwise disclosed to any person prior to having been marked or designated as Confidential Material, the non-designating party shall take reasonable steps to protect the confidentiality of the material, including, if applicable, (A) refiling under seal pleadings and other documents identified by the producing party, (B) designating portions of deposition transcripts identified by the producing party as confidential, and (C) in the event of disclosure of produced material to any person prior to designation, notifying any person to whom the material was disclosed and requesting that such person execute an Undertaking in accordance with paragraph 6 of this Stipulation and Order.

The parties agree that any action taken with respect to or use of produced material prior to its having been designated as Confidential Material or Highly Sensitive Material shall not be deemed a violation of

this Stipulation and Order.

(f) If copies of corporate or personal income tax returns are produced by any party, then all portions of such income tax returns will be deemed to be confidential and need not be stamped or otherwise indicate that they are confidential and protected by this order.

(g) If copies of medical records are produced by any party, then all portions of such medical records will be deemed to be confidential and need not be stamped or otherwise indicate that they are confidential and protected by this order.

4. **Challenging Designation of Produced Material as Confidential Material.**

(a) Any party reserves the right to challenge the designation pursuant to paragraph 3 of any produced material as Confidential Material or Highly Sensitive Material. Any party may do so notwithstanding that such material was previously treated by that party as Confidential Material or Highly Sensitive Material.

(b) In the event any party challenges the designation of produced material as Confidential Material or Highly Sensitive Material, the parties will confer in good faith in order to resolve the issues surrounding the challenge. In the event the parties are unable to resolve their dispute after conferring in good faith for a reasonable period of time, the parties (or any of them) may submit the matter to the Court, which will have jurisdiction over all parties for purposes of resolving any challenge under this Stipulation and Order. In such event, the

producing party or parties shall have the burden of establishing that the produced material properly was designated as Confidential Material or Highly Sensitive Material. Unless the parties otherwise agree, any produced material designated as Confidential Material or Highly Sensitive Material shall be maintained as confidential in accordance with the provisions of this Stipulation and Order during the period that the parties are conferring and, if the matter is submitted to the Court pursuant to this paragraph 4(b), until entry of a protective order or other ruling with respect to such designation.

(c) By entering into this Stipulation and Order, none of the parties shall in any way be deemed limited or prejudiced with respect to any challenge or request that the Court overrule or modify any designation of produced material as Confidential Material or Highly Sensitive Material.

5. **Disclosure of Confidential Material**

(a) Confidential Material, including all copies, excerpts and summaries thereof, and information contained therein, will be used solely for purposes of the Litigation and will not be used for any other purposes, including, without limitation, any business, commercial, labor-organizing or personal purpose, or any other judicial or administrative proceeding.

(b) Except as may be required by law, including an order, subpoena or similar directive issued by a court, legislative body or administrative agency, or as otherwise permitted by this Stipulation and Order, Confidential Material, including all copies, excerpts and summaries thereof, and information contained therein, may not be disclosed or publicized without the express prior written

consent of counsel for the disclosing party to any non-party including, without limitation, the media, any organization or association of current or former Allstate agents or employees, any labor organization, any competitor of Allstate, or any person or entity not identified in paragraph 5(c).

(c) Confidential Material and information contained therein may be disclosed, summarized, described, revealed, or otherwise made available in whole or in part only in accordance with the terms of this Stipulation and Order and only to the following persons:

- (i) any employees or representatives of the EEOC;
- (ii) any individual on whose behalf the EEOC has brought the Litigation;
- (iii) legal counsel for any individual on whose behalf the EEOC has brought the litigation, but only for the purpose of providing advice in any of the following circumstances: (1) testifying at a deposition, hearing or trial, or in preparation for any such testimony; (2) regarding documents contained in the individual's personnel file; (3) regarding documents which have previously been provided to the individual; (4) regarding documents which were prepared by the individual; (5) regarding documents which contain information that relates to that individual; or (6) providing advice with respect to whether or not the individual should sign a release of claims in connection with this litigation.
- (iv) counsel for the parties including the employees of such firms or the EEOC to the extent necessary to assist counsel in this

Litigation;

(v) the court, including its personnel and authorized representatives;

(vi) photocopy, document management, imaging and database service providers retained by one or more of the parties;

(vii) expert witnesses (who will not include any member of the media, any representative of an organization or association of current or former Allstate agents and/or employees, any representative of a bona fide labor organization, or any current employee of any financial services company or insurance company which is a competitor of Allstate); and

(viii) other witnesses, as appropriate, including for purposes of providing testimony at deposition, hearing or trial, and in preparation for such testimony.

(d) Notwithstanding the above, Highly Sensitive Material may not be disclosed, summarized, described, revealed or otherwise made available in whole or in part to any person identified in subparagraph (c)(i)-(ii) above, unless such person also falls into one or more of the categories identified in subparagraph (c)(iii)-(viii) above.

6. **Notice of Stipulation and Order; Statement of Knowledge and Agreement to be Bound.**

(a) Every person to whom Confidential Material or information contained therein is to be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part will first be

advised that the material or information is being disclosed pursuant and subject to the terms of this Stipulation and Order.

(b) Furthermore, persons identified in paragraph 5(c) above to whom disclosure of Confidential Material is made will be governed by the terms of and will confirm their understanding of their obligations under this Stipulation and Order by signing a copy of the written undertaking annexed hereto as Exhibit A (the "Undertaking"). To this end, the party making the disclosure will be required to obtain the signed Undertaking prior to disclosure, and any failure to make or obtain the same will be a material violation of this Stipulation and Order. When testifying expert witness signs a copy of the Undertaking, the party obtaining the signature will provide all other parties to this Stipulation and Order with copies of the same at the time of expert witness disclosures.

7. **Unauthorized Disclosure of Confidential Information.** In the event of disclosure of any Confidential Material or information contained therein to a person not authorized for access to such material in accordance with this Stipulation and Order, the party responsible for having made, and any party with knowledge of, such disclosure will inform the party that has designated the produced material as Confidential Material of the nature and circumstances of the unauthorized disclosure immediately after the revealing party becomes aware of such disclosure. The responsible party also will promptly take all reasonable measures to ensure that no further or greater unauthorized disclosure or use of such Confidential Material or information contained therein is made. All parties will cooperate in good faith in such efforts.

8. **Use of Confidential Material.**

(a) Nothing in this Stipulation and Order will prevent the use of any produced material which has been designated as Confidential Material or Highly Sensitive Material in this Litigation, except as expressly sated in this Stipulation and Order. Such use may include, but shall not be limited to, introducing and marking Confidential Material and Highly Sensitive Material as a deposition exhibit for the purpose of authentication or otherwise, as an exhibit in support of or in opposition to any motion, and as a trial exhibit or evidence.

(b) Notwithstanding the foregoing, the parties agree as follows:

(i) Confidential Material, or excerpts therefrom, shall be filed with the Court in a sealed envelope with the words, "Confidential Materials Sealed Pursuant to Court Order," displayed prominently on the outside of the envelope; provided, however, pleadings or other court filings that make reference to Confidential Materials, but do not quote substantially *verbatim* therefrom, need not be filed under seal.

(ii) At the option of any party, Confidential Material may be filed with the Court not under seal provided that either: (A) if the Confidential Material related to one or more individual agents and/or employees, such persons consent that the filing be made not under seal; or (B) Confidential Material is redacted to protect the privacy interests of agents and/or employees (*e.g.*, redaction of names and other identifying information).

9. **Modification of Stipulation and Order.** In the event any party seeks modification of this Stipulation and Order, whether to narrow or expand the terms

contained herein, or otherwise, the parties first shall confer in good faith in an attempt to resolve the issues pertaining to such modification. If the parties are unable to reach a mutually-acceptable resolution with respect to any proposed modification of this Stipulation and Order within a reasonable period of time, the parties will submit the matter to the Court.

10. **Duration of Stipulation and Order: Return of Confidential Material.**

(a) This Stipulation and Order shall remain in effect and will continue to be binding after the conclusion of the Litigation, and shall inure to the benefit of the parties and any of their respective heirs, legal representatives, officers, directors, shareholders, partners, agents, attorneys, employees, successors, and assigns.

(b) Within forty-five (45) days after conclusion of the Litigation (*i.e.*, after the time for all appeals has expired and all judgments or court-ordered obligations such as settlements and consent decrees, if any, have been satisfied), all parties and other persons in possession of produced material or information contained therein will dispose of all such material by returning such material to the producing party's counsel, and certifying that fact by affidavit or declaration.

(c) At the conclusion of the Litigation, and pursuant to a request by counsel of record for the party filing such document, the Clerk will return documents filed under seal to counsel or, at the request of counsel, destroy such documents.

11. **Termination of Access.** In the event that any party or person ceases to be engaged in the conduct of the Litigation, such party or person shall no longer be afforded

access to Confidential Material or information contained therein and all copies of Confidential Material in the possession or control of such party or person must be returned in accordance with the terms of paragraph 10(b) above, except that such return will take place as soon as practicable after such party or person ceases to be engaged in the conduct of the Litigation. Unless otherwise agreed by the parties or ordered by the Court, the provisions of this Stipulation and Order will remain in full force and effect as to any party or other person who previously had access to any Confidential Material or information contained therein.

12. **Limits of Stipulation and Order.** Producing Confidential Material or entering into, agreeing to, or otherwise complying with the terms of this Stipulation and Order will not:

- (a) operate as an admission by any party that any particular Confidential Material contains or reflects proprietary information or any other type of confidential information;
- (b) prevent the parties to this Stipulation and Order from agreeing to alter or waive in writing the provisions or protections provided for herein with respect to any Confidential Material or information contained therein;
- (c) operate as an admission that any material is relevant to the Litigation;
- (d) prejudice in any way the right of any party to object to any discovery request seeking production of material it considers not subject to discovery;
- (e) prejudice in any way any party's right to apply to the Court for

protective orders; or

(f) prejudice in any way any party's right to argue that judicial hearings or trials, including any portions thereof in which any Confidential Material, including Highly Sensitive Material, may be revealed, should or should not be open to the public.

13. **No Waiver.** By entering into this Stipulation and Order, no party has waived its right to object to any request for the production or disclosure of documents, information, tangible things, testimony or any other requested matter. The right to object includes the right to assert an objection on the basis that the request calls for the disclosure of confidential information that a party does not believe can be adequately protected by this Stipulation and Order.

14. **Enforcement and Remedies.**

(a) The provisions of this Stipulation and Order will be enforceable by the Court. In the event of a finding by the Court that this Stipulation and Order has been breached, the court may order any relief that it deems fair and equitable. The EEOC does not agree to the award of monetary damages, monetary penalty, or other monetary relief against it, nor does the EEOC waive any defense to such an award. The EEOC reserves its right to appeal any order that may be entered against it under the terms of this protective order.

(b) The Court will have continuing jurisdiction to enforce this Stipulation and Order throughout the Litigation and following its conclusion. The parties agree that any such enforcement proceedings will, subject to the schedule and approval of the Court, be determined on an expedited basis.

Exhibit A

UNDERTAKING

I have read the Stipulation and Order dated January 23, 2006 ("Stipulation and Order"), entered into by and among the parties and their counsel in the matter of *Equal Employment Opportunity Commission v. Allstate Insurance Company*, Civil No. 4:04CV1359, governing the handling of confidential material and information produced through discovery in the above-reference matters.

I understand the terms of the Stipulation and Order and agree to be fully bound by them.

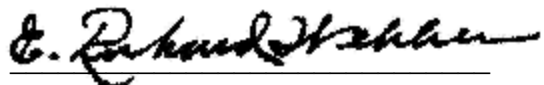
I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Missouri for purposes of enforcement of the Stipulation and Order.

Dated: _____ Signature: _____

Print Name: _____

Address: _____

So Ordered this 23rd day of January, 2006.



E. RICHARD WEBBER
U.S. DISTRICT JUDGE