

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**IN RE: SAMSUNG TOP-LOAD)
WASHING MACHINE MARKETING,)
SALES PRACTICES AND PRODUCT)
LIABILITY LITIGATION)**

MDL Case No. 17-ml-2792-D

**THIS DOCUMENT RELATES TO)
ALL CASES)**

ORDER

1. PURPOSES AND LIMITATIONS

The parties have advised the Court that discovery in this Litigation may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting and defending the Litigation may be warranted. Accordingly, the Court enters the following joint proposed Protective Order (the “Order” or the “Protective Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that 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. The parties further acknowledge, as set forth in Section 11.3, below, that this Protective Order does not entitle them to file confidential information under seal; section III.A. of the United States District Court for the Western District of Oklahoma’s Electronic Filing Policies & Procedures Manual sets forth the procedures that must be followed and the standards that will be applied when a party seeks leave of Court to file Protected Material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE

ATTORNEYS' EYES ONLY" under this Order.

2.2 "CONFIDENTIAL" Information, Items, or Material: any Material, information (regardless of how it is generated, stored or maintained), or tangible things produced by a Party or Non-Party in the Litigation which it believes constitutes, contains, reflects, or discloses confidential, non-public trade secrets, competitively sensitive or proprietary information, research and analysis, development or commercial information, or other information for which a good faith claim of need of protection from disclosure can be made under the Federal Rules of Civil Procedure and/or other applicable law.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items produced in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the Litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in the Litigation.

2.7 Final Disposition: the later of (1) dismissal of all claims and defenses in the Litigation, with or without prejudice; or (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of the Litigation, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

2.8 "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY" Information, Items, or Material: any Material, information (regardless of how it is generated,

stored or maintained), or tangible things that is (a) non-public personal information or (b) “CONFIDENTIAL” Material that the Producing Party reasonably and in good faith believes to be extremely sensitive confidential and/or proprietary information, disclosure of which to a Party or another Non Party would create a substantial risk of significant competitive or business injury to the Designating Party that could not be avoided by less restrictive means

2.9 House Counsel: attorneys who are employees of a party to the Litigation. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.10 Litigation: the above-captioned action styled as *In re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litigation*, No. 17-ml-2792-D (W.D. Okla.).

2.11 Material: documents, electronic information in any form, testimony, interrogatory responses and other information, including all copies, excerpts and summaries thereof, in any form

2.12 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party in the Litigation (or their officers, directors, employees, consultants, retained experts, House Counsel, and Outside Counsel of Record).

2.13 Outside Counsel of Record: counsel of record for the Parties, including all partners and associate attorneys of such counsel’s law firms who are assisting in the conduct of the Action, as well as any other counsel, other than House Counsel, and support personnel of such counsel who may be assisting counsel of record for the parties in the Action, and all clerks, employees, independent contractors, consultants, investigators, paralegals, assistants, secretaries, staff and stenographic, computer, audio-visual and clerical employees and agents thereof when operating under the supervision of such partners or associate attorneys. Outside Counsel of Record does not include House Counsel.

2.14 Party: any party to the Litigation, including all of its officers, directors, employees, consultants, retained experts, House Counsel, and Outside Counsel of Record.

2.15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery

Material in the Litigation.

2.16 Professional Vendors: persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.17 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY.”

2.18 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

This Protective Order governs the use and handling of Material produced or given by any Producing Party during the Litigation, up to, and including, trial. Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” under the provisions of this Protective Order, and information derived therefrom, shall be used only for the purpose of the Litigation and any related appellate proceeding, and not for any other business, competitive, personal, private, public, or other purpose whatsoever. The protections conferred by this Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material; (4) portions of deposition or other transcripts and exhibits thereto that contain, summarize, or reflect the content of any such Protected Material; (5) portions of briefs, memoranda, or any other writings filed with the Court and exhibits thereto that contain, summarize, or reflect the content of any such Protected Material; and (6) written discovery responses and answers that contain, summarize, or reflect the content of any such Protected Material. However, the protections conferred by this Order do not cover the

following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or which becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

4. DURATION

Even after Final Disposition of the Litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. All confidentiality designations must be made reasonably and in good faith. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific Material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of Material, documents, items, or oral or written communications that qualify – so that other portions of the Material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. A Designating Party shall not make clearly unjustified designations or designations for an improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties).

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that

it is withdrawing the mistaken designation and reproduce the Material with the correct designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the Material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” as applicable, to each page that contains Protected Material.

A Party or Non-Party that makes original documents or Materials available for inspection need not designate them for protection until after the inspecting Party has indicated which Material it would like copied and produced. During the inspection and before the designation, all Material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents to be copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the appropriate legend to each page that contains Protected Material.

(b) for testimony given in deposition, that the Designating Party identify all Protected Material either (i) on the record, before the close of the deposition, or (ii) by notice in writing to counsel of record within 30 days of receiving the transcript of the deposition. Only those portions of transcript that actually contain “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” Material may be so designated. All deposition transcripts will be treated as “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” Material until a party

designates any or all portions of the transcript as “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” Material or until thirty (30) days after receipt of the transcript, whichever is earlier. If a designation is made, the “CONFIDENTIAL” and/or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” portions of the transcript and exhibits, if filed with the Court, shall be subject to the filing requirements set forth in Paragraph 11.3 below. If any depositions are videotaped or digitally recorded, those portions of the videotape or recording corresponding to portions of the deposition transcript designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” shall be afforded the same status.

(c) for testimony given in other pretrial or trial proceedings, that the Designating Party identify on the record, before the close of the hearing or other proceeding, all protected testimony.

(d) with respect to electronic documents produced in native format, that the Designating Party shall designate CONFIDENTIAL “CONFIDENTIAL” or HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS EYES ONLY Information by stamping copies of the document or media, as appropriate, that contains the document with the appropriate legend.

(e) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” as applicable.

5.3 Inadvertent Failures to Designate. If corrected within a reasonable time from discovery, an inadvertent failure to designate qualified information or items does not waive the Designating Party’s right to secure protection under this Order for such Material. Upon timely correction of a designation, the Receiving Party shall take steps to assure that the

Material is treated in accordance with the provisions of this Order. The Designating Party shall provide substitute copies of the qualified information or items bearing the corrected designation. The Receiving Party shall return or certify the destruction of the undesignated Protected Material.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's designation of Disclosure or Discovery Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY," is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the Litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY" that the Challenging Party is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within five business days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the Designated Material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, the Designating Party shall file and serve a motion to retain confidentiality under LCvR7.1 (and in compliance with section III.A. of this Court's Electronic Filing Policies & Procedures Manual, if applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation.

After the Challenging Party has engaged in the meet and confer process outlined in Section 6.2, or has established that the Designating Party is unwilling to participate in the meet and confer process in a timely manner, the Challenging Party may, for good cause, file a motion challenging a confidentiality designation. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming (1) that the movant has complied with the meet and confer requirements imposed by Section 6.2, or (2) that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

The burden of persuasion in any challenge proceeding shall be on the Designating Party. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the Material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle the Litigation. Such Protected Material

may be disclosed only to the categories of persons and under the conditions described in this Order. When the Litigation has been terminated, a Receiving Party must comply with the provisions of section 12 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in the Litigation, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for the Litigation;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for the Litigation, as well as their immediate paralegals and staff;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for the Litigation and employees of said Expert to whom it is reasonably necessary to disclose the information for the Litigation, provided that (i) such Expert and employee has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (ii) such Expert and employee is not a current officer, director, or employee of a Party or of a competitor of a Party, and, at the time of retention, has no present plans to become an officer, director, or employee of a Party or of a competitor of a Party within the next three years. If there is any doubt about whether an entity of which an Expert or employee is or has present plans to become (within the next three years) an officer, director, or employee of a competitor of the Designating Party, prior to any disclosure, the Receiving Party shall identify the entity to the Designating Party, which shall advise the Receiving Party within seven days of such identification whether the Designating Party considers that entity

to be a competitor for purposes of the foregoing sentence (provided, however, that no party is obligated to disclose the identity of the Expert prior to the time provided by scheduling order). If the parties cannot agree on whether an entity constitutes a competitor for purposes of the foregoing sentence, they may seek the assistance of the Court.

(d) the Court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for the Litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

(g) any mediator, and his or her staff, who is assigned to hear this matter, and who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

(h) any other person with the prior written consent of the Designating Party.

7.3 Disclosure of “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” only to:

(a) the individuals listed in Section 7.2 categories a, c, d, e, f, g, and h.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in the Litigation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify, in writing, the Designating Party. Such notification shall include a copy of the subpoena or court order;

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

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in the Litigation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,” as applicable, before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential Material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in the Litigation to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify, in writing, the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform, in writing, the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced Material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review.

11. MISCELLANEOUS

11.1 Right to Further Relief. Nothing in this Order prevents any person from seeking its modification by the Court in the future.

11.2 Right to Assert Other Objections. By submitting this Protective Order to the Court for entry, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the Material covered by this Protective Order.

11.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in the Litigation any Protected Material. A Party that seeks to file under seal any Protected Material must comply with section III.A. of this Court's Electronic Filing Policies & Procedures Manual. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to section III.A. of this Court's Electronic Filing Policies & Procedures Manual, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to section III.A. of this Court's Electronic Filing Policies & Procedures Manual is denied by the court, then the Receiving Party may file the information in the public record pursuant to section III.A.

of this Court's Electronic Filing Policies & Procedures Manual unless otherwise instructed by the Court.

12. FINAL DISPOSITION

Within 60 days after the Final Disposition of the Litigation each Receiving Party must return all Protected Material to the Producing Party or destroy such Material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such Materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO ORDERED this 22nd day of December, 2017.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE

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 Protective Order that was issued by the United States District Court for the Western District of Oklahoma on _____ [date] in the case of *In re: Samsung Top-Load Washing Machine Marketing, Sales Practices and Products Liability Litigation*, No. 17-ml-2792-D (W.D. Okla.). I agree to comply with and to be bound by all the terms of this 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 Protective Order to any person or entity except in strict compliance with the provisions of this Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Oklahoma for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of the Litigation.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my Oklahoma agent for service of process in connection with the Litigation or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn or affirmed and signed:

Printed name: _____

Signature: _____