

THE STATE OF NEW HAMPSHIRE

Merrimack County  
216-2019-CV-00445

Superior Court

State of New Hampshire

v.

3M Company, E.I. DuPont de Nemours and Company, The Chemours Company, Corteva, Inc., and  
DuPont de Nemours, Inc.

---

~~[PROPOSED]~~ PROTECTIVE ORDER

To enable the flow of discovery material and adequately protect material that is entitled to be kept confidential, and to promote compliance with Rules of the Superior Court of the State of New Hampshire, the parties (the “Parties,” and each individually a “Party”) jointly enter this Protective Order pursuant to Rule 29(b).

**Purposes and Limitations.** The parties anticipate producing documents and information to each other that contain confidential, proprietary, or sensitive information. The parties are willing to provide these documents to each other for inspection and review under a protective order containing the hereinafter stated terms and conditions. By entering this Protective Order, the Court is not ordering that any confidential and/or proprietary information that is sought by any party in their requests for production and inspection is, or is not, subject to the disclosure and discovery process.

It is hereby ORDERED as follows:

1. This Order shall apply to Documents, Information, and other tangible things exchanged by the parties to this action or by third parties in discovery in this matter as further set forth below. Nothing in this Order creates a presumption or implies that material or information designated by a party pursuant to this Order actually constitutes protected information under applicable law, and such determination may be made at a later time by this Court.

2. **Definitions.** As used in this Protective Order, these terms have the following meanings:

- a. **“Action”** refers to this litigation captioned *State of New Hampshire v. 3M Company, E. I. du Pont de Nemours & Company, The Chemours Company f/k/a/ The Chemours Company, LLC. Corteva, Inc., and DuPont de Nemours, Inc.*, Case No. 216-2019-CV-00445, and any appeal.
- b. **“Material”** or **“Materials”** refers to documents, information, or any other tangible material or thing produced in the Action, including all materials within the scope of New Hampshire Superior Court Rules 21–29 (including electronically stored information “ESI”), and all exhibits, evidence, or testimony used or given at trial, in depositions, or in other proceedings in the Action and any other means of presenting, producing, or revealing information.
- c. **“Producing Party”** or **“Designating Party”** is the party or non-party producing Material and/or designating Material as Confidential, Highly Confidential, or Export Control Information.
- d. **“Receiving Party”** is a party or non-party receiving or having access to Material.
- e. **“Challenging Party”** is the party that challenges a particular designation of Material as Confidential, Highly Confidential, or Export Control Information pursuant to Section 11 of this Protective Order.
- f. **“Confidential Information”** means Material designated as Confidential in accordance with this Order unless (a) the party which designated the Material withdraws the confidential designation, or (b) the Court has determined that the Material does not constitute confidential Material.

A party may only designate Material as Confidential if it has a good-faith basis to

believe that the Material is, constitutes, or contains Information that is confidential under statute, rule, or other applicable law, including documents, information, or other tangible things that are confidential, proprietary, or commercially sensitive business or financial information, trade secrets, Confidential Health Information, Protected Health Information, Personally Identifiable Information or information that otherwise meets the standard for protection set forth in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and New Hampshire Superior Court Rule 13B(c)(2–3). Notwithstanding the foregoing, a Producing Party may not designate as confidential any Material that have been made publicly available, including through unsealed court filings, public EPA dockets, and/or other similar means by which information was placed in the public domain, except where the Material was made public in violation of this Order.

- g. **“Highly Confidential Information”** means Material designated as Highly Confidential in accordance with this Order unless (a) the party which designated the Material withdraws the Highly Confidential designation, or (b) the Court has determined that the Material does not constitute Highly Confidential material or information. A party may only designate Material as Highly Confidential if it has a good-faith basis to believe that (a) the Material is, constitutes, or contains Information that is confidential under statute, rule, or other applicable law, including documents, information, or other tangible things that are confidential, proprietary, or commercially sensitive business or financial information, trade secrets, Confidential Health Information, Protected Health Information, Personally Identifiable Information or information that otherwise meets the standard for protection set forth in Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure and Rule 13(B)(c)(2–3) of the Rules of the Superior Court of the State of New Hampshire; and (b) (i) the Material could provide its Competitor(s) with an

advantage, including, for example, economic or (ii) the Material, if released would cause harm to the interests of a governmental entity. If Materials are not designated as “Highly Confidential,” then they may be shown to a Competitor(s). Further, Materials designated as “Highly Confidential” pursuant to section (b)(i) of this paragraph are not permitted to be shown to a Competitor(s).

- h. **“Export Control Information”** means Material designated as Export Control in accordance with this Order unless (a) the party that designated the Material withdraws the export control designation, or (b) the Court has determined that the Material does not constitute Export Control material or information. A party may only designate Material as “Export Control Information” if it has a good-faith basis to believe that the Material is subject to United States’ export control law and regulations. The regulatory obligations with regard to such documents are specified, respectively, in the Export Administration Regulations (“EAR”) at 15 C.F.R. Parts 730-772, and the International Traffic in Arms Regulations (“ITAR”) at 22 C.F.R. Parts 120-130. Except as to Materials that have already been produced in other litigation and are being re-produced in this litigation, when a Producing Party produces Material that it believes to be subject to an Export Control designation, the Producing Party will likewise simultaneously provide a description log to the Receiving Party that provides the basis(es) upon which the Material is subject to a claim of ITAR and/or EAR and which precisely identifies the Material’s EAS number or range that applies to the Material.
- i. **“Confidential Health Information”** shall mean any patient health information protected by any state or federal law, including, but not limited to patient/insured/member medical records, patient/insured/member claims information, and other information that the Producing Party reasonably believes might contain

sensitive personal health information. The Parties agree that any Confidential Health Information whether contained in Materials produced in the Action or otherwise shall be deemed “Confidential” and, as such, subject to the terms of this Order. “Confidential Health Information” does not include any Material in which the Producing Party has redacted the identifiers listed above and does not have actual knowledge that the information could be used alone or in combination with other information to identify an individual who is the subject of the information. A Producing Party may, but is not required to, perform such redactions before producing Material that originally contained “Confidential Health Information,” but a Producing Party may not redact information that is relevant to any claim or defense in the Actions.

- j. **“Protected Health Information”** shall be defined as set forth in 45 C.F.R. §160.103 and 13B of the Rules of the New Hampshire Superior Court, including but not limited to: health information, including demographic information, relating to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual, which identifies or reasonably could be expected to identify the individual; medical bills; claims forms; charges sheets; medical records; medical charts; test results; notes; dictation; invoices; itemized billing statements; remittance advice forms; explanation of benefits; checks; notices; and requests; and includes all notes, summaries, compilations, extracts, abstracts or oral communications that are based on or derived from Protected Health Information, regardless of form or format, to the extent that they identify or reasonably could be expected to identify an individual. Protected Health Information also includes Information that contains the following

identifiers of a patient/insured/member or of a relative, employer, or household member of a patient/insured/member:

- Names;
- All geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;
- All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, and age to a level of detail greater than in years;
- Telephone numbers;
- Fax numbers;
- Electronic mail addresses;
- Social security numbers;
- Medical record numbers;
- Health plan beneficiary numbers;
- Account numbers;
- Certificate/license numbers;
- Vehicle identifiers and serial numbers, including license plate numbers;
- Device identifiers and serial numbers;
- Web universal resource locators (“URLs”);
- Internet protocol (“IP”) address numbers;
- Biometric identifiers, including finger and voice prints;
- Full face photographic images and any comparable images;
- Any other unique identifying number, characteristic, or code;

- Any other information that the Producing Party knows could be used alone or in combination with other Protected Health Information to identify an individual who is subject of the information; and
  - Family health or social information.
- k. **“Personally Identifiable Information”** shall include the following types of information:
- Social security numbers;
  - Account numbers;
  - Certificate/license numbers;
  - Vehicle identifiers and serial numbers, including license plate numbers;
  - Device identifiers and serial numbers;
  - Medical record numbers;
  - Health plan beneficiary numbers;
  - Internet protocol (“IP”) address numbers;
  - Biometric identifiers, including finger and voice prints;
  - Full face photographic images and any comparable images; and
  - Any other unique identifying number, characteristic, or code.

The Parties agree that any Personally Identifiable Information whether contained in Materials produced in this litigation or otherwise shall be deemed “Confidential” and, as such, subject to the terms of this Order.

The parties also seek to ensure that any person who receives and stores Personally Identifiable Information in connection with this Proceeding will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the privacy, integrity, and confidentiality

of any Personally Identifiable Information, and to prevent unpermitted use or disclosure of any Personally Identifiable Information they may receive from any person in connection with this Proceeding.

1. A “**Competitor**” shall mean any manufacturer (including its affiliates) involved in the manufacture or sale of any per- or polyfluoroalkyl substances (“PFAS”), as that term is used in the Complaint in this Action.
- m. “**Documents**” includes all materials within the scope of Rules 22, 24(a), and 25 of the Rules of the Superior Court of the State of New Hampshire, and all exhibits used at any deposition, hearing, trial or proceeding.
- n. “**Information**” includes all materials within the scope of Documents, exhibits, evidence or things used at trial, depositions or other proceedings; any testimony, whether given at trial or a deposition; and any other means of presenting, producing or revealing information.

3. **Access to Confidential Information.** All “Confidential Information” produced in discovery, if any, shall not be further disclosed, disseminated, or used for any purpose other than in connection with the preparation for trial and litigation of this Action, consistent with the restrictions on use of “Confidential Information” contained in this Order. Access to any Confidential Information shall be limited to:

- a. Judges, court reporters, court personnel, videographers, and special masters at trial, hearings, arguments, depositions and any other judicial proceedings in this Action.
- b. The parties and counsel of record for the parties in this Action, including the outside and in-house counsel of the parties, and the attorneys, secretaries, paralegals, assistants, and other employees in the same firm/company of such counsel, only to the extent reasonably necessary to render professional services in this Action.



- c. Messenger, copy, and other clerical services vendors not employed by a party or its counsel of record, only to the extent reasonably necessary to assist the parties and counsel of record for the parties in rendering professional services in this Action.
- d. The insurers or indemnitors of the defendants or any agents retained by the insurers or indemnitors including independent claims management personnel.
- e. Subject to paragraph 5 below, witnesses during depositions, hearings and trial testimony in this Action, either during deposition or trial testimony or to the extent reasonably necessary to prepare such persons to testify, and counsel for such persons to the extent not included in Section 3(b)
- f. Subject to paragraph 5 below, consultants or experts retained for the purpose of assisting counsel of record in this Action, including consulting and testifying experts, jury/trial consultants, and mock jurors or focus group members.
- g. Subject to paragraph 5 below, third-party contractors retained for the purpose of organizing, filing, coding, converting, storing, or retrieving Material or maintaining database programs for handling Material for this Action.
- h. Other persons who may be designated by written consent of the Producing Party or pursuant to Court order so long as said persons agree to be bound as set forth in this Order, including paragraph 5 herein.

4. **Access to Highly Confidential Information.** All “Highly Confidential Information” produced in discovery, if any, shall not be further disclosed, disseminated, or used for any purpose other than in connection with the preparation for trial and litigation of this Action, consistent with the restrictions on use of “Highly Confidential Information” contained in this Order. Access to any Highly Confidential Information shall be limited to:

- a. Judges, court reporters, court personnel, videographers, and special masters at trial,

hearings, arguments, depositions and any other judicial proceedings in this Action.

- b. Counsel of record for the parties in this Action, including the outside counsel of the parties and the attorneys, secretaries, paralegals, assistants, and other employees in the same firm/company of such counsel, and the in-house counsel of the parties who do not directly advise on business issues and the secretaries, paralegals, assistants, and other employees of such counsel, litigation counsel for insurers and indemnitors handling this litigation, and counsel and staff of the New Hampshire Department of Justice and the secretaries, paralegals, assistants and other employees of the department, and such other counsel and staff within the New Hampshire government who are involved in this litigation, such as counsel and staff for the New Hampshire Department of Environmental Services, only to the extent reasonably necessary to render professional services in this Action.
- c. Subject to paragraph 5 below, personnel of a defendant-party necessary to assist with the litigation who agree to not disclose any information to other personnel and to use the information disclosed solely for the purpose of assisting with the litigation may have access to “Highly Confidential Information” dated prior to January 1, 2006, to the extent necessary to assist with the litigation.
- d. Messenger, copy, and other clerical services vendors not employed by a party or its counsel of record, only to the extent reasonably necessary to assist the parties and counsel of record for the parties in rendering professional services in this Action.
- e. Subject to paragraph 5 below, witnesses during depositions and trial testimony in this Action.
- f. Subject to paragraph 5 below, persons noticed for depositions or designated as trial witnesses in this Action to the extent reasonably necessary to prepare such persons to

testify.

- g. Subject to paragraph 5 below, consultants or experts retained for the purpose of assisting counsel of record in this Action, including consulting and testifying experts, jury/trial consultants, and mock jurors or focus group members.
- h. Subject to paragraph 5 below, third-party contractors retained for the purpose of organizing, filing, coding, converting, storing, or retrieving Materials or designated database programs for handling Materials for this Action.
- i. Other persons who may be designated by written consent of the Producing Party or pursuant to Court order so long as said persons agree to be bound as set forth in this Order, including paragraph 5 herein.

5. **Access to Export Control Information.** All “Export Control Information” produced in discovery shall not be further disclosed, disseminated, or used for any purpose other than in connection with the preparation for trial and litigation of this Action, consistent with the restrictions on use of “Export Control Information” contained in this Protective Order and under applicable United States law. Export Control Information shall not be disclosed to any individual who is not a U.S. Person or stored on cloud servers or any media physically located outside of the United States. By entering into this Protective Order, the parties and their counsel hereby give their assurances that they will implement practices and controls to ensure that access to Export Control Information is restricted to “U.S. persons” in compliance with the International Traffic in Arms Regulations and Export Administration Regulations.

6. **Signing Exhibit A.** Before disclosing Confidential or Highly Confidential Information to any person listed in paragraphs 3(e)-(h) or paragraphs 4(e)-(i), the party proposing such disclosure must provide a copy of this Protective Order to such person, who must sign the attached Exhibit A. That party must retain a signed copy on file for inspection by the Court. If the person to

whom disclosure is contemplated refuses to sign Exhibit A and is a witness being deposed or compelled to testify pursuant to a subpoena, notice, or other order of this Court, then the parties will work cooperatively to seek a ruling on the issue by the Court prior to the person's scheduled testimony. While awaiting a ruling on the issue by the Court, no one may disclose Confidential Information or Highly Confidential information to the person at issue.

7. **Filing Confidential Information or Export Control Information or Highly Confidential Information with the Court.** Pursuant to the Rules of the Superior Court of New Hampshire 13B, the parties may seek to restrict public access to Confidential Information, Export Control Information and Highly Confidential Information contained in Documents filed with the Court. Any request to restrict access must comply with the requirements of Rule 13B of the Superior Court, State of New Hampshire, and there will be a presumption that any Material designated as Confidential Information, Highly Confidential Information, or Export Control Information should remain under seal based upon the approval and entry of this Protective Order. Should a party wish to use Material designated as Confidential Information, Highly Confidential Information, or Export Control Information in any Document filed with the Court, the party may request de-designation of such Materials or redaction from the Designating Party. Absent such agreement, the parties agree to redact Confidential Information, Export Control Information, and Highly Confidential Information from any Document filed with the Court. If a party seeks to have the Court review Confidential Information, Export Control Information, or Highly Confidential Information contained within the Document, the Document shall be filed under seal pursuant to the procedures in the Rules of the Superior Court of the State of New Hampshire 13B and Supplemental Rules of the Superior Court of New Hampshire for Electronic Filing in Specified Civil Cases 11, with the portion of the Document that the filing party seeks to have the Court review remaining unredacted but filed with a Motion to Seal. If the filing party is not the party who designated the Material as Confidential Information, Export Control Information,

or Highly Confidential Information, the non-filing party must be provided with ten days to file a response or to join in the Motion to Seal. Any Party may from time to time initiate a motion in compliance with the Rules of the Superior Court of New Hampshire for the review of any Materials filed under seal and to unseal for the public record any Document(s) for which a prior confidentiality designation has since been lifted since the time of the under seal filing.

8. **Designating Information as Confidential, Highly Confidential, or Export Control Information.** The parties may only designate Materials Confidential, Highly Confidential and/or Export Control if they have a good-faith basis to believe that the Materials are Confidential, Highly Confidential, and/or Export Control Information, as the case may be, under statute, rule, or other applicable law and subject to paragraph 2 above.

With respect to Materials that are produced in TIFF format, the designation of confidentiality shall be made by including the words “CONFIDENTIAL – SUBJECT TO NHAG PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL, SUBJECT TO NHAG PROTECTIVE ORDER” and/or “EXPORT CONTROL – SUBJECT TO NHAG PROTECTIVE ORDER” in the document in a manner reasonably calculated to be observed by anyone who obtains possession of the electronic document. The addition of any designation pursuant to this Order shall not be deemed an alteration of the document. With respect to Materials that are produced in native format, the designation of confidentiality shall be made by including the words “CONFIDENTIAL – SUBJECT TO NHAG PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO NHAG PROTECTIVE ORDER” and/or “EXPORT CONTROL – SUBJECT TO NHAG PROTECTIVE ORDER” on a cover sheet produced in TIFF format along with the native file and may include, at the Producing Party’s discretion, the words “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and/or “EXPORT CONTROL” in the file name of the native file as produced. If a party adds a designation to the file name for Material produced in Native Format pursuant to the Document Production Protocol entered

in this litigation, then such additions will not be considered an alteration of the file.

9. **Re-Production of Materials from Other Litigation(s).** To the extent that any Defendant reproduces Materials from other litigation(s), all such Materials clearly marked as being “Confidential” and subject to a protective order in such litigation will be deemed designated as “Confidential” in this Action (subject to challenge in this case as provided below in Paragraph 11); all such documents clearly marked “Export Control Information” will be deemed designated as “Export Control” in this Action (subject to challenge in this case as provided below in Paragraph 11); and all such documents clearly marked “Highly Confidential” will be deemed designated as “Highly Confidential” in this Action (subject to challenge in this case as provided below in Paragraph 11). For the avoidance of doubt, for purposes of re-productions, the parties agree that the provisions of the respective protective orders entered in other litigations shall remain in full force and effect and shall in no way be superseded or nullified by the entry of this Order, except that no person shall assert or argue that production or use of such re-produced Materials in this Action is a violation of any such prior protective orders because of any person not signing the confidentiality acknowledgement of such prior protective orders if the person has signed the Exhibit A to this Order. Nothing in this Protective Order shall permit a party to designate any portion of Materials produced from other litigation(s) as “Confidential,” “Export Control Information,” or “Highly Confidential” or to reassert/assert a Confidential, Highly Confidential, or Export Control claim over such Documents or Information from other litigation(s) if:

- a. The Materials from the other litigation(s) were not already designated as either “Confidential,” “Highly Confidential,” or “Export Control” under the protective order in the other litigation(s), subject to the permission below;
- b. The confidentiality or Export Control designation for such Material from other litigation(s) had been withdrawn by the prior Producing Party during the other

litigation in which it was produced; or

- c. A Court overseeing another litigation(s) in which such Material was/were originally produced overruled the confidentiality or Export Control designation for such Document or Information previously.

For materials reproduced in this Action from other litigation, and subject to the foregoing provisions, a Producing Party is not precluded from amending a designation of reproduced material in a reasonable and particularized manner upon a Producing Party's discovery of need for such amendment(s). In such instances, a Producing Party shall have 14 days from discovery to amend an instant designation of reproduced material. Contemporaneously with producing an amended designation, a Producing Party shall set forth in writing the good-faith basis supporting an amended designation and, if requested, shall confer with a Receiving Party about same. A Receiving Party may contest any original or amended designation of reproduced material in this Action in accordance with Paragraph 11. A Producing Party shall undertake reasonable efforts to promptly notify all Receiving Parties, in writing, if any confidentiality designation the Producing Party made in any other litigation over material produced in this litigation is withdrawn, amended to a different protected category (*e.g.*, Highly Confidential lowered to Confidential), or rejected by any court overseeing such designation and shall promptly withdraw or amend any such confidentiality designation in this litigation in accordance with a ruling in such other litigation to the extent appropriate and consistent with the provisions in this Protective Order and the law in New Hampshire.

10. **Designating Deposition Transcripts as Confidential, Highly Confidential, or Export Control.** All depositions or portions of depositions taken in this Action and any Documents, things, or exhibits used at those depositions may be designated as "Confidential" or "Highly Confidential" and/or "Export Control Information" pursuant to the terms of this Protective Order. A Party may designate deposition exhibits or transcripts as Confidential, Highly Confidential, and/or

Export Control Information, on the record at the time the testimony or exhibit is offered, at which time such testimony or exhibit shall be marked “Confidential,” “Highly Confidential” and/or “Export Control Information” by the court reporter and shall be subject to the full protection of this Order. If on the record designation occurs, the designating party must memorialize such on the record designation by the page-and-line process that follows. If assertions of designations are reserved or otherwise not made at the deposition, in order to designate a deposition exhibits or transcripts as Confidential or Highly Confidential and/or Export Control Information, a party must make a “line and page” designation by written notice to the other parties within 30 calendar days of receipt of the transcript of the deposition from the court reporter. Unless otherwise agreed, depositions and Documents, things, or exhibits used at those depositions shall be treated as “Highly Confidential” during the 30-calendar-day period following receipt of the transcript from the court reporter, after which time, the failure of a party to make the above-required designation in writing within 30 (thirty) days of its receipt of the deposition transcript shall result in waiver of any claim of the transcript and exhibits being deemed either “Confidential,” “Highly Confidential”, or “Export Control Information,” subject to paragraph 11 below.

11. **Contesting Designation of Documents.** If any party believes that any Material produced or re-produced in this litigation pursuant to Paragraph 9 that is designated Confidential, Highly Confidential and/or Export Control Information does not constitute Confidential, Highly Confidential and/or Export Control Information, then that Challenging Party may challenge that designation by notifying the Designating Party in writing, identifying the Material contested, and articulating the reason(s) for challenging the designation. The parties shall promptly confer in good faith and use their best efforts to resolve any challenge to a designation. If the parties are unable to resolve the dispute within fourteen (14) days of the notice to the Designating Party of such challenge, or the Designating Party does not respond within such time, then the Challenging Party may request



resolution of the dispute by the Court. The Designating Party shall have the burden of showing that the Materials are Confidential, or Highly Confidential, or Export Control Information. Pending resolution of the parties' dispute over a designation, the Material in question shall be treated as originally designated by the Producing Party.

12. **Failure to Designate Materials.** Subject to and without in any way changing the restrictions and limitations set forth in Paragraph 9 above, any party who fails to designate Material produced in this case as Confidential or Highly Confidential and/or Export Control Information shall have fourteen (14) calendar days from the discovery to correct the designation, if such designation is permitted under Paragraph 9 above. Such corrections shall be made by providing written notice of the amended designation and substituted copies of the previously produced Material with the appropriate confidentiality and/or Export Control Information designation. Any party receiving such previously unmarked Material shall make reasonable efforts to retrieve the original versions of such Material from any person to whom they were provided that would not be entitled to receive the Material under this Protective Order; provided, however, that any party who had received such previously unmarked Material shall have no liability for having received or shared any such Material contained within such documents prior to receipt of their proper designation as Confidential, Highly Confidential, or Export Control Information as provided herein, and subject to the Receiving Party's right to challenge any such Confidential, Highly Confidential or Export Control Information designation under the terms of this Protective Order. Such disclosure will not on its own be deemed a waiver in whole or in part of the Producing Party's claim of Confidential, Highly Confidential or Export Control status, either as to specific Material disclosed or on the same or related subject matter. Within a reasonable time of receipt of such notice, the Receiving Parties will mark the Material and all copies "Confidential" or "Highly Confidential" and/or "Export Control," as the case may be, and treat the Material as Confidential Information or Highly Confidential and/or Export Control Information, as

the case may be, under the terms of this Order, and subject to the Receiving Parties' right to challenge any such designation under the terms of this Protective Order. Notice under this section will be deemed to apply to all copies of the Material disclosed.

13. **No Waiver of Any Privilege Upon Production.** The parties have agreed that, in discovery in this lawsuit, they do not intend to disclose Material subject to a claim of attorney-client privilege, attorney work product protection or any other applicable privileges or protections. Production of material or electronically stored information ("ESI") that is subject to work-product, attorney-client privilege or any other applicable privileges or protections, whether inadvertent or otherwise, shall not constitute a waiver of the privilege or protection in this Action or any other federal or state proceeding, provided that the Producing Party shall notify the Receiving Party in writing as set forth herein. In the event that a party produces Material subject to a claim of any applicable privilege or protection, the Producing Party shall within fourteen calendar days (14) of awareness of the allegedly inadvertent production notify the other party in writing of the disclosure including a description of the Materials that were produced (including the format of the production – e.g. paper, ESI) and the date(s) the Materials were produced. The Producing Party may, in the notice, request a "clawback" of such Materials. Nothing set forth herein is intended to alter the Parties obligations under New Hampshire Rule of Professional Conduct 4.4(b). If the Producing Party claims that only a portion of a document, electronically stored information or tangible thing produced is subject to a claim of privilege or protection, the Producing Party shall within three (3) business days of notice provide a new copy of the Material with the allegedly privileged information or protected portions redacted. A Receiving Party shall within fourteen (14) calendar days of receipt of proper notice of an allegedly inadvertent production herein provide written notice to the Producing Party whether an instant clawback will be disputed or challenged, and the Parties shall promptly meet and confer in good faith to resolve such dispute or challenge. In this 14-day period, the Receiving Party shall immediately and

diligently act to retrieve and sequester the subject Material, and all copies, including any loaded to databases, and notes or work product concerning the clawed-back Materials. If a Receiving Party does not dispute or challenge a clawback in this period, the clawed-back Materials and notes or work product about them shall be returned to the Producing Party or destroyed as agreed between the parties. If a Receiving Party determines in good-faith to dispute or challenge the instant clawback, the Materials, and notes or other work product about them, shall be sequestered and used solely for purposes of the dispute during the period of the dispute. No use shall be made of such clawed-back Materials during depositions, at trial or any public court proceeding, nor shall they be disclosed to anyone who was not given access to them prior to the request to return or destroy them while the dispute is pending, unless otherwise ordered by the Court. The Receiving Party may, after receipt of the Producing Party's notice, and after retrieving and sequestering the clawed-back Materials and engaging in a reasonable good faith meet and confer process, move the Court to dispute the claim of privilege. However, the Receiving Party may not challenge the privilege or immunity claim by arguing that the sequestration process or retention of notes or work product concerning the clawed-back Materials or disclosure itself is a waiver of any applicable privilege. If the Receiving Party elects to file a motion, the Receiving Party may retain possession of the Materials as well as any notes or other product of the Receiving Party reflecting the contents of such materials pending the resolution by the Court of the motion but shall segregate and not use them or further disclose them to any person pending resolution of the motion. If the Receiving Party's motion is denied, the Receiving Party shall promptly destroy or return such Material, including all copies, and any notes or work product reflecting the content of such Material.

For materials reproduced in this Action from other litigation, and subject to the foregoing provisions of Paragraph 13, a Producing Party is not precluded from asserting privilege and clawing back reproduced material in accordance with applicable law. In such instances, a Producing Party shall

have fourteen (14) calendar days from discovery of the oversight to notify other Parties in this Action in writing of the assertion of privilege and clawback of instant documents under the provisions of Paragraph 13. Contemporaneously with the written clawback notice, a Producing Party shall set forth in writing the grounds for the clawback, including for example factual and legal bases, and if requested shall confer with a Receiving Party about same. A Receiving Party may contest the clawback of reproduced material in this Action in accordance with the provisions of Paragraph 13 and applicable law.

14. **Legal Process for Designated Information.** Subject to paragraph 16 below, if Confidential Information, Highly Confidential Information and/or Export Control Information of a Producing Party is sought from a Receiving Party by a discovery request, subpoena, order, RSA 91-A and/or other form of legal process from or by any person, court, or administrative or legislative body, then the party receiving the discovery request, subpoena, order, or other form of legal process must immediately notify the Producing Party. The party receiving the request must not, except to the extent required by applicable law, provide or otherwise disclose such Materials until 30 days after giving counsel for the Producing Party notice in writing, accompanied by a copy of the discovery request, subpoena, order or other form of legal process. If the Producing Party objects to disclosure, then the party to whom the discovery request, subpoena, order or other form of legal process is directed agrees not to make any disclosure in response to it until the resolution of the objection by the appropriate court.

15. **Storage and Transmittal.** To avoid security risks inherent in certain current technologies and to facilitate compliance with the terms of this Protective Order, all persons with access to Confidential Information, Highly Confidential Information, or Export Control Information are prohibited from storing or transmitting any Confidential Information, Highly Confidential Information, or Export Control Information in or via any online service (other than counsel or a parties'

own firm/corporate email system) that is managed or maintained by any third party other than a litigation support service provider that uses (i) a secure document hosting facility, (ii) encrypted web-enabled software, (iii) secure sharing and collaboration among only authorized users, and (iv) does not employ public cloud computing services. Notwithstanding the foregoing provisions of this paragraph, the parties may temporarily store and/or transmit files with Confidential Information, Highly Confidential Information, or Export Control Information to persons authorized to receive Confidential Information, Highly Confidential Information, or Export Control Information as email attachments, via secure FTP, Dropbox and/or Box.com, and/or by way of a third-party vendor that the parties agree may be used for encrypted and secure, domestic transmissions, provided that for any such transmissions the parties take all reasonable steps to protect Confidential Information, Highly Confidential Information, or Export Control Information from being disclosed to unauthorized third parties. The use of a third-party vendor may include short-term, incidental storage of files for the sole purpose of transmitting them, provided that the files are promptly deleted upon transmission. The parties may separately confer and agree in writing to make mutual accommodations under this paragraph.

16. **Use of Designated Information.** Each person given access to Confidential Information, Highly Confidential Information and Export Control Information shall treat it as appropriate under this Order and shall take all actions necessary to protect the information. Confidential Information, Highly Confidential Information, and Export Control Information shall be used by a party or person receiving such Material solely for purposes of this Action, and must not be used for any business, competitive, legal, or any other purpose unrelated to this Action without the express written consent of counsel for Producing Party or by order of the Court. Nothing in this Protective Order limits any Party to this Action from disclosing or otherwise using in this Action:

- a. its own internal Material produced or disclosed in this Action; or
- b. any Material produced or disclosed in this Action not subject to this Protective Order

and not designated as “Confidential” or “Highly Confidential” and/or “Export Control”.

- c. Material that is not otherwise Confidential, Highly Confidential or Export Control that a Party already possessed through proper means from other sources, including but not limited to discovery a Party obtained in similar litigation; provided, however, that this provision does not limit a Party’s obligations to produce, disclose, or otherwise provide reasonable notice in this Action of such Materials it already possesses in accordance with discovery obligations of the New Hampshire Superior Court Rules.

17. **Designated Information Produced by a Non-Party.** Any non-party who may be called upon to make discovery herein or provide deposition or other testimony pursuant to subpoena or other formal or informal discovery device is entitled to avail itself of the provisions and protections of this Protective Order. All Material designated by the non-party as Confidential Information or Highly Confidential Information and/or Export Control Information will be treated in the same manner as any Confidential Information or Highly Confidential Information and/or Export Control Information (as the case may be) produced by the parties.

18. **Non-Termination.** The duty to treat Confidential Information, Highly Confidential Information, and Export Control Information as set forth in this Protective Order survives the completion of this Action. At the conclusion of this Action by settlement, jury verdict, judgment order, or otherwise, including any and all appeals, each party so requested must either return all Confidential Information, Highly Confidential Information and Export Control Information to counsel for the party that produced it; or must destroy it, unless otherwise agreed among the Parties. The return or destruction of Confidential Information, Highly Confidential Information, and Export Control Information under this paragraph will include, without limitation, all copies and duplicates thereof. The parties will certify, within 90 days of receipt of a written request for certification, or such other

time frame agreed among the parties, that all Confidential Information, Highly Confidential Information, and Export Control Information required to be returned or destroyed has been so returned or destroyed, unless otherwise agreed by the Parties. Unless otherwise ordered by the Court, this Paragraph does not apply to (a) copies of pleadings or other papers that have been filed with the Court and that contain Confidential Information or Highly Confidential Information and/or Export Control Information; (b) their work product; and (c) official deposition, trial or other Court transcripts and exhibits thereto. The terms and provisions of this Order will continue to apply to any such materials retained by counsel.

19. **Non-Waiver of Objections.** Neither this Protective Order nor any of the provisions described herein is a waiver of any party's right to object to the admissibility or discoverability of any Material on bases not addressed by this Protective Order; or to seek further protection from the Court before producing Material that any party believes may not be adequately protected by the provisions of this Protective Order, or to seek leave to refuse production of such Material.

20. **No Admissions or Prejudice.** Nothing in this Order, or any action taken in compliance with it, shall (a) operate as an admission against interest by any party, (b) prejudice in any way the right of any party to seek a determination that designated Materials should or must be disclosed, (c) prejudice in any way the right of a party to seek a determination that any designated Materials are required to be disclosed, or (d) prejudice in any way the right of any Receiving party to seek a determination that designated Materials were not properly designated. This Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any party or person with respect to any Confidential Information.

21. **Enforcement.** This Order shall continue to be effective following termination of this case, and the Merrimack County Superior Court of New Hampshire shall retain jurisdiction with respect to this Order after the final judgment or dismissal of this case. For purposes of enforcement

and other matters related to this Order, each person given access to designated Materials under this Order will be deemed to have agreed and will be subject to the jurisdiction of this Court for purposes of enforcement.

22. **Modification Permitted.** This Protective Order may be modified at any time by the Court on its own motion or, for good cause shown, on motion of a party or non-party or by agreement of the Parties with the Court's approval.

**SO ORDERED.**

March 16, 2021

Dated: \_\_\_\_\_, 2021

Concord, New Hampshire



Honorable John C. Kissinger

Hon. John C. Kissinger

Clerk's Notice of Decision  
Document Sent to Parties  
on 03/17/2021



**EXHIBIT A**  
**Acknowledgment and Agreement to Be Bound by Protective Order**

\_\_\_\_\_ declares that:

I reside at\_\_\_\_\_. I am currently employed  
by\_\_\_\_\_, located at\_\_\_\_\_,  
and my current job title is\_\_\_\_\_.

I have read and understand the terms of the Protective Order entered in this action. I understand and agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I will not divulge any information, documents, or copies of Confidential Information, Highly Confidential Information, or Export Control Information obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I will not copy or use such information or documents except for the purposes of this action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 90 days after final termination of this action, I will return to the attorney from whom I have received them any documents in my possession that are Confidential Information, Highly Confidential Information, or Export Control Information and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the above Court for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date