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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of the Redomestications of

SYMETRA LIFE INSURANCE
COMPANY and SYMETRA NATIONAL
LIFE INSURANCE COMPANY,

Authorized Domestic Insurers.

No. 14-0031

UNOPPOSED MOTION FOR
PROTECTIVE ORDER REGARDING
EXHIBIT 6-B, PRO-FORMA
FINANCIAL STATEMENTS

I. INTRODUCTION

This matter relates to applications by Symetra Life Insurance Company and Symetra National Life Insurance Company (collectively, "Symetra") to transfer their domicile ("redomesticate") to the state of Iowa pursuant to RCW 48.07.210(2). For the sole purpose of completing the applications, Symetra's in-house financial reporting and actuarial staff prepared pro forma financial statements for each company. Because those statements contain protected proprietary and trade-secret information, Symetra moves to submit them only for in camera review by the hearing officer, subject to a protective order that prevents them from being filed in the public record and from being quoted orally or in writing, or otherwise placed in the record.

UNOPPOSED MOTION FOR PROTECTIVE ORDER
REGARDING EXHIBIT 6-B, PRO-FORMA FINANCIAL
STATEMENTS - 1

CARNEY BADLEY SPELLMAN, P.S.
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Seattle, WA 98104-7010
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ORIGINAL

II. STATEMENT OF FACTS¹

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2 Symetra Life and Symetra National are currently domestic Washington life and
3 disability insurers controlled by Symetra Financial Corporation, a diversified financial
4 services company based in Bellevue, Washington. On January 14, 2014, Symetra Life
5 submitted an application to the OIC to redomesticate to the state of Iowa pursuant to RCW
6 48.07.210(2). Symetra National submitted a similar application on February 6, 2014.
7 Symetra's in-house financial reporting and actuarial staff created pro-forma financial
8 statements to comply with the application requirements. These statements were prepared
9 exclusively for use in connection with the proposed redomestication and have been accessible
10 only by Symetra employees directly involved with the redomestication effort. They have not
11 been, and will not be, distributed to stockholders or anyone else outside the company.

12 In accordance with the application instructions, Symetra listed in Schedule I of each
13 application those financial documents excluded from the exhibits because they contained
14 confidential information that Symetra considers to be proprietary or trade secret. Each list of
15 excluded attachments includes Exhibit 6-B, the pro forma financial statement.

16 As explained in the Declaration of David S. Goldstein, the pro forma financial
17 statements contain specific information regarding (1) management's projections of the
18 financial performance of Symetra Life and Symetra National, (2) assumptions regarding
19 interest rates, and (3) assumptions concerning anticipated returns on Symetra's investment
20 portfolio. Symetra does not publicly disclose this information, requires and trains its
21 personnel not to disclose it, and further restricts access to certain employees in the Law and
22 Finance departments.

23 The hearing officer has requested to review the pro forma financial statements in
24 preparation for the redomestication hearing scheduled for June 19, 2014. The OIC has

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26 ¹ The facts stated in this motion are based on the Declaration of David S. Goldstein, dated June 16, 2014.

1 represented that it will not oppose a motion to limit disclosure of the pro forma financial
2 statements to the hearing officer's in camera review.

3 III. AUTHORITY AND ARGUMENT

4 The pro forma financial statements are exempt from the general requirement that the
5 OIC preserve records of hearings for public inspection. *See* RCW 48.02.120(1), (2); *see also*
6 RCW 42.56.070(1) (Public Records Act). Where the legislature has exempted a record or
7 information from public disclosure, no discretion exists to permit disclosure. *Bldg. Indus.*
8 *Ass'n of Wash. v. Dep't of Labor & Indus.*, 123 Wn. App. 656, 666, 98 P.3d 537 (2004).

9 A specific exemption in the Insurance Code provides: "Actuarial formulas, statistics,
10 and *assumptions*...submitted to the commissioner upon his or her request shall be withheld
11 from public inspection in order to preserve trade secrets or prevent unfair competition." RCW
12 48.02.120(3) (emphasis added). The pro forma financial statements fit squarely within this
13 exemption. They include management's projections of Symetra Life's and Symetra
14 National's financial performance over the next three years, which plainly is proprietary and
15 nonpublic. They also include Symetra's assumptions regarding the movement of interest rates
16 and anticipated returns on its commercial mortgage investment portfolio. Preserving the
17 confidentiality of this and similar information contained in the pro forma financial statements
18 is essential to prevent unfair competition.

19 In addition, the Uniform Trade Secrets Act (UTSA) is an exemption to the Public
20 Records Act. *Progressive Animal Welfare Soc'y (PAWS) v. Univ. of Wash.*, 125 Wn.2d 243,
21 262, 884 P.2d 592 (1994) (holding that the PRA is "an improper means to acquire knowledge
22 of a trade secret"). The UTSA defines "trade secret" as:

23 [I]nformation, including a formula, pattern, compilation, program, device,
24 method, technique, or process that:

- 25 (a) Derives independent economic value, actual or potential, from not
26 being generally known to, and not being readily ascertainable by proper

1 means by, other persons who can obtain economic value from its
disclosure or use; and

2 (b) Is the subject of efforts that are reasonable under the circumstances to
3 maintain its secrecy.

4 RCW 19.108.010(4). "A trade secrets plaintiff need not prove that every element of an
5 information compilation is unavailable elsewhere. ... Such a burden would be
6 insurmountable since trade secrets frequently contain elements that by themselves may be in
7 the public domain but together qualify as trade secrets." *Boeing Co. v. Sierracin Corp.*, 108
8 Wn.2d 38, 50, 738 P.2d 665 (1987) (citation omitted).

9 Ownership of a trade secret is a constitutionally protected property interest.
10 *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011-12 (1984). *See also Mountain States*
11 *Telephone & Telegraph Co. v. Dep't of Pub. Serv. Reg.*, 634 P.2d 181, 185-86 (Mont. 1981).
12 "A trade secret which is used in one's business, and which gives one an opportunity to obtain
13 an advantage over competitors who do not know or use it, is private property which could be
14 rendered valueless or of less value to its owner if disclosure of the information to the public
15 and to one's competitors were compelled." *Id.*; *see also Ruckelshaus*, 467 U.S. at 1011-12
16 ("Once the data that constitute a trade secret are disclosed to others, or others are allowed to
17 use the data, the holder of the trade secret has lost his property interest in the data."). Filing
18 trade secrets in the public record not only would violate state law, but could result in a taking
19 of private property for public use in violation of the Fifth and Fourteenth Amendments to the
20 United States Constitution. *See Ruckelshaus*, 467 U.S. at 1014-16.

21 The elements of a trade secret under the UTSA are met here. First, the pro forma
22 financial statements derive economic value from their confidentiality. For example, they
23 contain assumptions regarding interest rates that would be used by competitors to underprice
24 Symetra's interest-rate sensitive insurance products. Similarly, competitors would use
25 Symetra's assumptions about anticipated returns on its commercial mortgage loan portfolio to
26 undercut Symetra's interest rates and otherwise offer more favorable terms to potential

1 commercial loan mortgagees. Symetra would also be significantly damaged in its ability to
2 negotiate agreements with potential commercial loan mortgagees. And public disclosure of
3 Symetra's projected financial performance would put Symetra at a competitive disadvantage
4 to its competition and the financial markets as a whole, as companies are not generally
5 required to publicly release internal forecasts and projections at the level of detail contained in
6 the pro forma financial statements.

7 The second element of a trade secret is met because Symetra undertakes reasonable
8 efforts under the circumstances to maintain the secrecy of the information at issue, including
9 not disclosing it in public filings, requiring employees not to disclose it, and restricting access
10 to the law and finance employees involved in the redomestication effort.

11 IV. CONCLUSION

12 Because state law prohibits public disclosure of the pro forma financial statements,
13 this Court should enter a protective order providing that Symetra shall submit the statements
14 only for in camera review and that they will not be filed in the public record where they could
15 be subject to public inspection. The order should also provide that the contents shall not be
16 quoted orally or in writing, or otherwise placed in the record in the course of the proceedings.

17 DATED this 16th day of June, 2014.

18 CARNEY BADLEY SPELLMAN, P.S.

19
20 By 

21 Timothy J. Parker, WSBA # 8797

22 Jason W. Anderson, WSBA # 30512

23 Melissa J. Cunningham, WSBA # 46537

24 Attorneys for Symetra Life Insurance Company and
25 Symetra National Life Insurance Company
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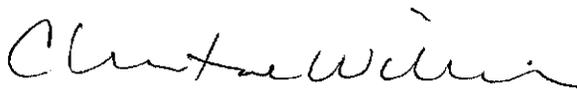
DECLARATION OF SERVICE

I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On June 16, 2014, I caused to be delivered via *email and legal messenger* a copy of the foregoing document on the following parties at the last known address as stated:

Judge George Finkle (Ret.) Hearing Officer Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 kellyc@oic.wa.gov	<u>Attorney for OIC</u> Andrea Philhower, Staff Attorney Legal Affairs Division Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 andreap@oic.wa.gov
	<u>Office of the Insurance Commissioner</u> Gayle Pasero Company Licensing Manager Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 gaylep@oic.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 16th day of June, 2014.



Christine Williams, Legal Assistant

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STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of the Redomestications of

SYMETRA LIFE INSURANCE
COMPANY and SYMETRA NATIONAL
LIFE INSURANCE COMPANY,

Authorized Domestic Insurers.

NO. 14-0031

DECLARATION OF DAVID S.
GOLDSTEIN IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER
REGARDING PRO FORMA FINANCIAL
STATEMENTS

David S. Goldstein declares:

1. I am Senior Vice President, General Counsel and Secretary of Symetra Financial Corporation and its insurance subsidiaries, including Symetra Life Insurance Company ("Symetra Life") and Symetra National Life Insurance Company ("Symetra National"). In this capacity, I oversee the activities of the companies' legal and compliance departments, including corporate governance, securities compliance, contracts, and regulatory affairs.

2. Symetra Life and Symetra National are currently domestic Washington companies admitted to transact life and disability insurance in Washington State. Each is controlled by Symetra Financial Corporation, a diversified financial services company based

DECLARATION OF DAVID S. GOLDSTEIN IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER REGARDING PRO
FORMA FINANCIAL STATEMENTS - 1

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ORIGINAL

1 in Bellevue, Washington and publicly traded on the New York Stock Exchange under the
2 symbol SYA. On January 14, 2014, Symetra Life submitted an application to the Office of
3 Insurance Commissioner to transfer their domicile (or “redomesticate”) to the state of Iowa
4 pursuant to RCW 48.07.210(2). Symetra National submitted a similar application on
5 February 6, 2014.

6 3. Schedule I of each redomestication application lists those financial documents
7 excluded from each application because the documents include confidential information that
8 Symetra considers to be proprietary and trade secret. This list includes Exhibit 6-B to each
9 application, the Pro-Forma Financial Statements for both companies. I understand that the
10 hearing officer has requested to review each of the Pro-Forma Financial Statements in
11 connection with the redomestication hearing scheduled for June 19, 2014.

12 4. The Pro Forma Financial Statements were created by Symetra’s in-house
13 financial reporting and actuarial staff. They were prepared exclusively for use in connection
14 with the proposed redomestication, and have been accessible only by Symetra employees
15 directly involved with the redomestication effort. They have not been, and will not be,
16 distributed to stockholders or anyone else outside the company.

17 5. The Pro Forma Financial Statements contain information that is confidential,
18 sensitive, and proprietary. Specifically, they contain management’s projections of Symetra
19 Life’s and Symetra National’s financial performance over the next three years. Because the
20 projected financial performance of Symetra Life and Symetra National together are material
21 to the financial performance of Symetra, and because these projections are not disclosed
22 publicly, these projections constitute material nonpublic information within the meaning of
23 within the meaning of federal and state securities laws. Federal and state securities laws
24 prohibit Symetra from selectively disclosing material nonpublic information. In addition, the
25 Pro Forma Financial Statements identify certain assumptions relied upon by Symetra in
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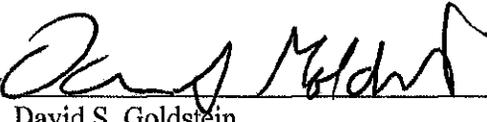
1 preparing the projected financial performance. These assumptions include, but are not limited
2 to, assumptions regarding the movement of interest rates and anticipated returns on our
3 investment portfolio.

4 6. Symetra takes great care to protect the confidentiality of this information. It is
5 never publicly disclosed and never made available to competitors. All Symetra employees are
6 required to maintain the confidentiality of confidential information pursuant to Symetra's
7 Code of Business Conduct, and undergo annual corporate-wide confidentiality training to
8 ensure this type of information remains confidential. In addition to these general precautions,
9 the confidentiality of the Pro Forma Financial Statements is further ensured by restricting
10 access to this information to certain employees in the Law and Finance departments.

11 7. If this information were to become public, it would certainly be used by other
12 companies in competition with Symetra. For example, the Pro Forma Financial Statements
13 contain assumptions regarding interest rates that would be used by competitors to underprice
14 Symetra's interest-rate sensitive insurance products. As another example, competitors would
15 use our assumptions concerning anticipated returns on our commercial mortgage loan
16 portfolio to undercut Symetra's interest rates and otherwise offer more favorable terms to
17 potential commercial loan mortgagees. Symetra would also be significantly damaged in its
18 ability to negotiate agreements with potential commercial loan mortgagees. Lastly, public
19 disclosure of Symetra's projected financial performance would put Symetra at a competitive
20 disadvantage to its competition and the financial markets as a whole, as companies are not
21 generally required to publicly release internal forecasts and projections at the level of detail
22 contained in the Pro Forma Financial Statements. As such, the information in the Pro Forma
23 Financial Statements derives great economic value to Symetra from its continued secrecy.

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
2 STATE OF WASHINGTON THAT THE FOREGOING STATEMENTS ARE TRUE AND
CORRECT TO THE BEST OF MY KNOWLEDGE.

3 DATED this 16th day of June, 2014, at Bellevue, Washington.

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5 By 
6 David S. Goldstein
7 Senior Vice President, General Counsel and
8 Secretary, Symetra Financial Corporation
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DECLARATION OF DAVID S. GOLDSTEIN IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER REGARDING PRO forma
financial statements – 4

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I, Christine Williams, under oath hereby declare as follows: I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, and not a party to nor interested in this action. On June 16, 2014, I caused to be delivered via *email and legal messenger* a copy of the foregoing document on the following parties at the last known address as stated:

Judge George Finkle (Ret.) Hearing Officer Office of the Insurance Commissioner 5000 Capitol Boulevard Tumwater, WA 98501 kellyc@oic.wa.gov	<u>Attorney for OIC</u> Andrea Philhower, Staff Attorney Legal Affairs Division Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 andreap@oic.wa.gov
	<u>Office of the Insurance Commissioner</u> Gayle Pasero Company Licensing Manager Office of Insurance Commissioner P.O. Box 40255 Olympia, WA 98504-0255 gaylep@oic.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 16th day of June, 2014.



Christine Williams, Legal Assistant