

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of **Security Benefit Mutual**)
Holding Company)

Docket No. 4103-DM

PROTECTIVE ORDER

DEFINITIONS

1. “Confidential information,” as used herein, shall mean trade secrets, privileged information, and confidential commercial, financial, or other data within the scope of K.S.A. 45-221, K.S.A. 45-221i, K.S.A. 60-432, or K.S.A. 60-434, and shall include all documents, transcripts, or other material in whatever form or media that contains or reflects such confidential information.
2. “Parties”, as used herein, shall mean the Kansas Department of Insurance Testimonial Team, Security Benefit Mutual Holding Company (“SBMHC,”), Security Benefit Corporation (“SBC”), Guggenheim SBC Holdings LLC, their affiliates or a person receiving notice of hearing pursuant to K.S.A. 40-3304(d)(2), or whose interests may appear to be affected by such hearing and who proposes to present evidence, examine or cross-examine witnesses, or offer arguments in relation to the proceeding provided for in K.S.A. 40-3304, or a person whose petition for leave to intervene pursuant to K.S.A. 77-521 has been granted by the presiding officer to such persons.

CONFIDENTIAL INFORMATION

1. This Protective Order (“Protective Order”) shall govern the designation and handling of confidential information that is filed with the Kansas Department of Insurance or otherwise produced in the above captioned proceedings.
2. Any party who elects or is required to produce documents or information in this proceeding may designate material produced as “confidential” pursuant to this Protective Order. Any non-party who is required to produce documents or information in this proceeding may designate material produced as “confidential” pursuant to this Protective Order. Such party or non-party may designate as confidential documents or information that in good faith the party or non-party believes constitutes confidential information as defined herein. Documents shall be designated as confidential by affixing the following legend, or a substantial equivalent, in a size and location that makes the designation readily apparent: “*CONFIDENTIAL. This document is subject to a Protective Order of the Kansas Commissioner of Insurance in Case No. _____.*” Confidential documents shall be designated in good faith as “confidential” only by an attorney or other person

familiar with this Order and with the provisions of K.S.A. 45-215 *et seq.*, K.S.A. 60-432, and K.S.A. 60-434. Documents designated as “confidential” shall be treated as confidential information for purposes of the Protective Order, subject to the provisions of paragraph 9.

- 3 All confidential information shall be used only for this proceeding and shall not be used for business or competitive purposes, or for any other purpose except in connection with this proceeding unless and until written authorization to make other use of such information is given by agreement of counsel for the producing party.
- 4 Confidential information filed with the Department of Insurance in this proceeding for any purpose shall be filed in a sealed envelope or other container, marked on the outside with the caption of this proceeding and the following statement: ‘*CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.*’
- 5 Except as otherwise set forth herein, no confidential information shall be delivered, exhibited or disclosed to persons other than the parties to this proceeding, counsel representing the parties in this proceeding, any paralegal, stenographer, clerical or other employee of such counsel assisting in the processing of the application and the Commissioner and her advisor and counsel. In addition, confidential information may be delivered, exhibited, or disclosed to the following persons:
 - a. Any expert or consultant (and their employees) identified in writing by counsel for any of the parties to assist in the preparation of this case or to testify in this proceeding.
 - b. Any person identified as having authored or previously received the material.
- 6 Counsel desiring to reveal confidential information to any of the persons referred to in paragraph 5 a. and b. above shall provide such person with a copy of this Protective Order prior to disclosure of any confidential information. Any person described in paragraph 5 who requests to review information designated as “Confidential” pursuant to this Protective Order, prior to being provided with any confidential information, shall execute an Agreement to Maintain Confidentiality in the form annexed hereto as Exhibit A. Counsel shall retain executed Agreements to Maintain Confidentiality during the pendency of this proceeding and, upon the termination of this proceeding, those Agreements shall be filed under seal with the Commissioner. The requirement to execute an Agreement to Maintain Confidentiality shall not apply to the Commissioner, counsel of record for a party, members or employees of counsel’s firm, counsel’s principals, or in-house counsel for a party. By signing the Agreement to Maintain Confidentiality, the person shall be deemed to have agreed to be bound hereby and to be subject to the jurisdiction (as applicable) of the Department of Insurance and/or the District Court of Shawnee County, Kansas, for any proceedings relative to enforcement of this Protective Order.

7. The terms of this Order shall survive and remain in effect after the termination of this proceeding. The parties and non-parties shall take such measures as are necessary and appropriate to prevent the public disclosure of confidential information, through inadvertence or otherwise, after the conclusion of this proceeding.
8. This Protective Order shall not create any presumption of confidentiality and the party or non-party who seeks to have the document or information designated as confidential has the burden of proving that the designation of confidentiality is warranted under applicable law.
9. In the event that at any time any party disagrees with another party's or non-party's designation of confidential information, such parties or non-parties shall first attempt to resolve the dispute by personally meeting and conferring. If the dispute is not resolved through that process within ten (10) days after notification of the non-producing party's disagreement with the confidential designation, then either party or non-party may move the Commissioner to lift the confidential designation with respect to such material, or to continue the confidential designation, as is appropriate. Any disputed document or other material shall be treated as confidential until a ruling regarding confidentiality is entered and for fifteen (15) days after the Commissioner has notified the parties and non-parties of her decision to remove a document's confidential designation. If any party or non-party wishes to seek protection from the Commissioner's order, it may apply within the 15-day period to the Commissioner to stay her order lifting the confidential status until final resolution of this dispute.
10. Within sixty (60) days after the conclusion of this proceeding, including any petitions for judicial review and any appeals, a producing party or non-party may request the destruction or return of the confidential documents subject to this Protective Order by any other party or non-party receiving such information designated as "Confidential" under this Order. If such a request is made, the party or non-party receiving such a request shall within sixty (60) days after receipt of such request: (a) return or destroy the documents and (b) certify in writing to the producing party or non-party that all such documents (including any copies provided to other persons by the receiving party under paragraph 5) have been returned or destroyed. The expense of such destruction shall be borne by the producing party or non-party. Nothing contained in this paragraph shall apply to the records in the possession of the Commissioner of Insurance or the formal files of this proceeding. Notwithstanding the foregoing, consultants of and counsel to each party and non-party may retain one confidential file copy of the materials related to their engagement and work performed in connection therewith.
11. Nothing in this Protective Order shall limit any producing party's or non-party's use of its own documents or information or shall prevent them from disclosing their own confidential information to any employee, consultant, attorney, or agent of the producing party or non-party. Such use or disclosure shall not affect any confidential designation made pursuant to the terms of this Protective Order, unless the confidential information is made public by the producing party or non-party.

12. Upon good cause shown, any party or non-party covered by this Protective Order may apply to the Commissioner for relief from any provision of this Order or for an order imposing additional restrictions upon the confidentiality of documents or other material.
13. This Order does not restrict or limit the use of confidential information at any hearing. Nothing in this Order, however, shall prevent any party or non-party from seeking an appropriate protective order to govern such use of confidential information at any hearing conducted in the proceeding.

Dated this 22nd day of March _____ 2010.



/s/ _____
John W. Campbell, General Counsel
Kansas Insurance Department

NOTIFICATION OF SERVICE

A true and correct copy of the foregoing **PROTECTIVE ORDER** dated the ____ day of March 2010, has this ____ day of 2010, been sent to the below identified counsel or parties.

/s/ _____
Zachary J.C. Anshutz
Kansas Insurance Department

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Holding Company) Docket No. 4103-DM
_____)**

AGREEMENT TO MAINTAIN CONFIDENTIALITY

The undersigned agrees:

I hereby attest to my understanding that information or documents designated confidential are provided to me subject to the Protective Order dated the ____ day of 2010, in the above captioned proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by its terms. I also understand that my execution of this Agreement to Maintain Confidentiality, indicating my agreement to be bound by the Protective Order is a prerequisite to my review of any information or documents designated as confidential pursuant to the Protective Order.

I further agree that I shall not disclose to others, except in accord with the Protective Order, any confidential information, as defined therein, or any information contained in such confidential information, in any form whatsoever, and that such confidential information may be used only for the purposes authorized by the Protective Order.

I further agree and attest to my understanding that my obligation to honor the confidentiality of such information will continue even after this proceeding concludes.

I agree to be bound hereby and to be subject to the jurisdiction (as applicable) of the Department of Insurance and/or the District Court of Shawnee County, Kansas, for any proceedings relative to enforcement of this Protective Order.

Dated this ____ day of _____ 2010.

EXHIBIT A

