

No. SC-2025-0918

IN THE SUPREME COURT OF ALABAMA

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Ex Parte State Farm Fire and Casualty Company,  
Petitioner.

(In re: James M. Foor and Krystina Foor v. State Farm Fire  
Mutual Insurance Company)

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From the Circuit Court of Bullock County  
(No. 09-CV-2025-900001)  
(The Honorable Burt Smithart, presiding)

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BRIEF OF AMICUS CURIAE  
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## STATEMENT REGARDING ORAL ARGUMENT

*Amicus curiae* Alabama Defense Lawyers Association adopts Petitioner's position regarding the desirability of oral argument in this case. ADLA will not move to participate in oral argument but is prepared to participate if requested by the Court. *See* ALA. R. APP. P. 29(f).

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## SUMMARY OF THE ARGUMENT

The trial court's error here is simple and stark. It entered an order that allows Plaintiffs' counsel to use State Farm's confidential information not only in this case, but in any other bad-faith roof-claim case in which those same lawyers choose to "associate" themselves. With that one step—one phone call, one referral agreement—Plaintiffs' counsel can grant other lawyers full access to State Farm's proprietary materials. Nothing requires the new litigants to serve discovery, litigate a motion to compel, or satisfy any burden at all.

This is not a protective order. It is an access program. And Alabama law—which recognizes a party's right to protect its confidential information—has not tolerated it and should not tolerate it now. Courts across the country agree: orders that purport to be "protective" but instead facilitate dissemination to other litigants do not protect a party's confidential information. Those decisions reflect a basic principle of civil discovery: a litigant in one case has no right to distribute confidential information obtained in discovery to litigants elsewhere. Allowing such distribution also imposes unnecessary burdens on trial courts, which would have to police more discovery disputes driven by the fear that

producing anything in one case will expose a defendant's information in many others.

This Court should issue the writ, vacate the trial court's order, and require entry of a genuine protective order—one that limits the use of State Farm's confidential information to the case in which it was produced.

## ARGUMENT

### **I. A defendant has a legal right to the protection of its confidential information “to the maximum extent practicable.”**

A defendant has a legal right to have its confidential information protected “to the maximum extent practicable.” *Ex parte W.L. Halsey Grocery Co.*, 897 So. 2d 1028, 1035 (Ala. 2004). Every business—large or small—is entitled to shield from public disclosure the proprietary information it has developed through the labor of its employees and the investment of its owners.<sup>1</sup> That right does not vanish when the business becomes a defendant. Alabama and federal law reflect this principle: valuable commercial information such as design or manufacturing

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<sup>1</sup> The Alabama Defense Lawyers Association (“ADLA”) assumes for the purposes of this Amicus Brief that the information State Farm seeks to protect as confidential is confidential.

processes, client lists, new computer programs, and research methods remain protectable even in litigation. For good reason—keeping the results of its investment confidential is how a business competes and survives in Alabama, the United States, and internationally.

Substantive law confirms the importance of confidentiality. Both the federal Defend Trade Secrets Act, 18 U.S.C. § 1836, *et seq.*, and the Alabama Trade Secrets Act, Ala. Code §§ 8-27-1 to -6, authorize courts to enjoin and remedy the misappropriation of trade secrets. And Alabama’s procedural rules likewise empower trial courts to protect such information in litigation. Rule 26(c) permits a court to “make any order that justice requires,” including one “that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way . . .” Ala. R. Civ. P. 26(c). The Alabama Rules of Evidence are even more emphatic, conferring “a privilege . . . to refuse to disclose and to prevent other persons from disclosing a trade secret.” Ala. R. Evid. 507. And even when disclosure is ordered, “the court shall take such protective measures as the interest of the holder of the privilege . . . require[s].” *Id.*

This Court has repeatedly enforced these protections. In *Halsey*, for example, it “order[ed] the trial court to protect” the defendant’s “trade-secret information to the *maximum extent practicable*.” 897 So. 2d at 1035 (emphasis added). And the Court has stressed that once confidential information is disclosed, “[t]he proverbial bell cannot be unrung”; “[o]nce the information becomes available through the discovery process, a subsequent appeal, even if successful, cannot restore the valuable secretive nature.” *Ex parte Miltope Corp.*, 823 So. 2d 640, 645 (Ala. 2001) (citations omitted). And in *Ex parte Robert Bosch LLC*, the Court held that a trial court had provided “insufficient protection” even though the order already prohibited disclosure outside the litigation; the Court required a “more comprehensive and restrictive” order to guard against misuse. 177 So. 3d 884, 889, 893 (Ala. 2015).

The harms this Court has tried to avoid are present in full force here. Plaintiffs’ counsel expressly sought a “sharing provision” allowing them to disseminate State Farm’s confidential information to “other attorneys represent[ing] plaintiffs with similar claims” in other cases. (Pet. App. D, Docs. 81, 83.) And although the trial court declined to adopt that language verbatim, it approved the same end result: Plaintiffs’

counsel may use State Farm’s confidential information not only in this case but in “any cases in which [they] also represent parties that have made claims of bad faith against State Farm relative to a roof claim,” and may share that information with “any governmental agency” they deem relevant. (Pet. App. H, Doc. 116.)

Functionally, the trial court’s order allows Plaintiffs’ counsel to distribute State Farm’s confidential information to any attorney they choose—so long as the attorney first associates them. Nothing requires the new litigants to serve discovery or to meet any burden at all. A single co-counsel engagement letter unlocks State Farm’s proprietary materials.

This Court “is not required to blind itself to the purpose for which a party seeks information.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 352 n.17 (1978). Discovery is not allowed when its “purpose . . . is to gather information for use in proceedings other than the pending suit.” *Id.* Yet the trial court’s order does just that by allowing Plaintiffs’ counsel to use confidential information obtained in this case in other cases. That result cannot be squared with the requirement to protect a defendant’s

confidential information “to the maximum extent practicable.” *Halsey*, 897 So. 2d at 1035.

This Court’s mandamus precedents foreclose what the trial court did. In *Ex parte Industrial Warehouse Servs., Inc.*, 262 So. 3d 1180 (Ala. 2018), the defendant “sought to limit the use of the discovered information to the litigation of these consolidated cases,” while the plaintiffs’ attorneys “sought to use the discovery for purposes beyond the instant litigation” and “to share the discovered information with other plaintiffs’ attorney[s].” *Id.* at 1182. In other words, just as here, “the issue simply [was] whether the discovered information should be subject to a protective order that prohibits dissemination to nonparties.” *Id.* at 1189 (Mendheim, J., concurring in part and dissenting in part). This Court held that the circuit court had abused its discretion by denying the petitioner’s motion for a protective order and ordered it to enter an order “that provides adequate protection for the trade secrets contained in the discovery produced by [the petitioner].” *Id.* at 1188. As Justice Mendheim’s concurrence noted, it could do so by, *inter alia*, “restrict[ing] the disclosure and use of the disputed discovery to and by the parties in this case.” *Id.* at 1189.

*Bosch* and *Miltope* reinforce the point. In both cases, this Court concluded that a protective order that limited use of the confidential information to the pending case was still insufficient. *Bosch*, 177 So. 3d at 889–90; *Miltope*, 823 So. 2d at 642–43, 645. If that baseline protection can sometimes be inadequate, then the trial court’s order here—which affirmatively allows use in other cases—is indefensible.

The trial court’s refusal to limit the use of State Farm’s confidential information to this case flouts this Court’s recognition that a defendant’s confidential information should be protected to the maximum extent practicable.

**II. A plaintiff has no legal right to distribute a defendant’s confidential information outside the litigation in which the information was obtained.**

A plaintiff’s ability to use a defendant’s confidential information is limited to the needs of the litigation in which the information is produced. It is not a general license to distribute the information simply because a lawsuit was filed. Neither the First Amendment nor the common law abrogate a party’s confidentiality interest in discovery materials. Instead, because discovery is a creature of rule and statute, “[a] litigant has no First Amendment right of access to information made available

only for purposes of trying his suit.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 (1984). As the Washington Supreme Court had put it in the decision below, “[T]he effective administration of justice *does not require dissemination beyond that which is needed for litigation of the case.*” *Rhinehart v. Seattle Times Co.*, 654 P.2d 673, 679 (Wash. 1982) (en banc) (emphasis added).

Plaintiffs’ counsel’s suggestion—that judicial efficiency is somehow served by allowing them to disseminate State Farm’s proprietary information with little limitation—runs afoul of these principles, as well as federal and Alabama trade-secret law, Alabama common law, and the Rules of Civil Procedure and of Evidence. Nothing in Alabama law transforms discovery into a mechanism for arming other litigants with a defendant’s confidential information. Just the opposite—the scope of discovery is limited to non-privileged matter that is “relevant to the subject matter involved in *the pending action.*” Ala. R. Civ. P. 26(b)(1) (emphasis added). In other words, “discovery in one matter is not intended to afford a party an opportunity to seek information for an unasserted claim, or a yet-to-be filed case.” *Strough v. Gen. Motors LLC*, 2019 WL 2357306, at \*3 (D. Colo. June 4, 2019). A “sharing” provision,

which improperly tries “to provide a strategic discovery benefit to counsel and litigants *in future cases*,” thus “has no bearing on discovery *in this case*.” *Id.* (emphasis in original).

Nor, for that matter, does a defendant have to help non-parties or plaintiffs’ counsel bring future lawsuits against it. Although this Court has not yet confronted a sharing provision exactly like the one here, courts that have—“particularly in the federal system”<sup>2</sup>—“have been hostile to upfront sharing provisions.” *Associated Terminals, LLC v. Entergy Corp.*, 2023 WL 5529703, at \*4 (E.D. La. Aug. 28, 2023); *see also Rosas v. Goodyear Tire & Rubber Co.*, 2019 WL 3308481, at \*5 (S.D. Tex. June 3, 2019) (collecting cases). The reason is practical: once confidential information can be shared outside the litigation in which it was produced, it is difficult (if not impossible) to control where it goes next.

The Ohio Court of Appeals has highlighted these concerns. In ordering a trial court to adopt stronger non-sharing provisions in a protective order, the court explained that “disclosure to collateral

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<sup>2</sup> “Because the Alabama Rules of Civil Procedure were patterned after the Federal Rules of Civil Procedure, cases construing the federal rules are considered authoritative in construing the Alabama rules.” *Reynolds Metals Co. v. Hill*, 825 So. 2d 100, 104 n.1 (Ala. 2002).

litigants increases the risk of harm from the disclosure of confidential information” because “[t]he more entities that have access to the information, the greater the risk of harm.” *Byrd v. U.S. Xpress, Inc.*, 26 N.E.3d 858, 864 (Ohio App. 2014). It emphasized that courts’ handling of “confidential information will impact the willingness of parties to lawsuits to produce [that] information” in the first place. *Id.* (citing Arthur Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 477 (1991)). And it warned that giving plaintiffs unilateral authority to decide “with whom they share information” “eviscerate[s]” the “traditional protections for producing parties in the discovery process.” *Id.* at 866.<sup>3</sup>

To be sure, these courts have not held that sharing can *never* occur. But they recognize a commonsense rule: “confidential information is best protected” when “the court is able to determine with whom sharing is

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<sup>3</sup> Multiple courts agree. *See, e.g., Harris v. Kellogg, Brown & Root Servs., Inc.*, 2008 WL 5246017, at \*3 (W.D. Pa. Dec. 15, 2008) (“[T]he Court declines to cede control of Defendant’s confidential information in this action to Plaintiffs, which would be the ultimate effect of the [nationwide dissemination provision].”); *Biazari v. DB Industries, LLC*, 2017 WL 1498122, at \*3–4 (W.D. Va. Apr. 26, 2017); *Burgess v. Nationwide Prop. & Cas. Ins. Co.*, 2023 WL 11113883, at \*1 & n.2 (N.D. W. Va. Oct. 18, 2023).

permitted,” *Harris*, 2008 WL 5246017 at \*4. A company’s proprietary information remains proprietary even during litigation, and this Court should not allow engagement of Plaintiffs’ counsel to become a *carte blanche* to circumvent the discovery process and access State Farm’s confidential information.

Courts’ skepticism of broad dissemination provisions is rooted in the very concerns this Court has repeatedly emphasized: confidential information should be protected “to the maximum extent practicable.” *Halsey*, 897 So. 2d at 1035. Unfettered dissemination does the opposite. A defendant loses the “traditional protection[]” of “a prior opportunity to object” before its confidential information is given to someone else. *Byrd*, 26 N.E.3d at 866. And without that safeguard, the normal “protections in the discovery process”—threshold pleadings, relevance limits, objections, motions for protective orders—are eliminated:

First, before discovery is initiated, there generally needs to be a lawsuit. A defendant who believes that a claim has been frivolously brought may ask the court to hold off on discovery until it has ruled on a motion to dismiss. Discovery may be resisted, because it is so far afield that it is not likely to lead to the discovery of relevant information. Moreover, a defendant who believes that his or her information is sought for an improper purpose may resist discovery or seek particularized protections before disclosing information.

*Id.* (internal citation omitted). The result is that a defendant “has no way of knowing who is getting [its] information” and “has no advance opportunity to resist disclosure” before its information is handed over to someone else. *Id.*

Because the “bell cannot be unrung” once disclosure happens, *Miltope*, 823 So. 2d at 645, a protective order that permits dissemination of a defendant’s confidential information for use in other litigation is no protective order at all.

### **III. Protective order provisions that allow dissemination of confidential information in other cases may cause protracted discovery disputes and inefficiencies.**

Finally, Plaintiffs insisted to the trial court that “sharing” provisions in protective orders “promote judicial efficiency sought by Rule 1 and should be encouraged, not forbidden.” Pet. App. D, Doc. 81 at 1-2. The opposite is true.

Discovery is often broad, and “[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action.” *Seattle Times*, 467 U.S.at 20. Yet “because our courts expect litigants to cooperate to resolve discovery disputes if possible,” *Southampton 100, LLC v. Ala. Dep’t of Revenue*, ---

So. 3d ---, 2025 WL 3291490, at \*5 (Ala. Nov. 26, 2025), parties may elect not to press objections even to close questions, trusting that any confidential material they produce will remain protected.

A “sharing” provision changes the calculus. When the opposing litigant has free rein to disseminate the confidential information to other litigants in other cases, the stakes rise. “[T]he more widely confidential documents are disseminated, it becomes both more likely that those documents will be released, and more difficult for [a] [c]ourt to enforce the terms of its protective order.” *Williams v. Taser Int’l, Inc.*, 2006 WL 1835437, at \*2 (N.D. Ga. June 30, 2006). Anticipating that disclosure in one case may become disclosure everywhere, defendants will be far more inclined to object in good faith to disputed discovery requests. For that reason, and as one court observed, “sharing” provisions “may actually cause delay in the production of documents as Defendants act more deliberately in deciding whether to produce or object to discovery, concerned that any material produced in discovery will be shared widely among the Plaintiffs’ Bar across the country for no verifiable legitimate purpose.” *Strough*, 2019 WL 2357306, at \*2; *accord Byrd*, 26 N.E.3d at 864.

The predictable result is more—not fewer—discovery disputes. Trial courts will more often have to resolve arguments “about the details and scope of discovery.” *Mobile Invs., LLC v. Corp. Pharm. Servs., Inc.*, 415 So. 3d 1018, 1025 (Ala. 2024). The Court should not endorse a rule that would cause such discovery disputes to proliferate. After all, “the discovery process is designed to work without the need for constant intervention by our trial courts.” *Southampton*, 2025 WL 3291490, at \*5. Allowing litigants to disseminate confidential materials obtained in one case for use in another would invite the opposite result. It would make judicial intervention more frequent, not less.

## CONCLUSION

The Court should grant State Farm’s petition and order the trial court to enter a genuine protective order that prohibits disclosure of its confidential information outside this litigation, consistent with the rights of civil defendants under Alabama law and the protections consistently granted to civil defendants by courts across the country.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with the font and word requirements of the Alabama Rules of Appellate Procedure. This brief utilizes 14-point Century Schoolbook font, and has 2,793 words.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief of *Amicus Curiae* Alabama Defense Lawyers Association was electronically filed on the 12th day of December, 2025, with the Clerk of the Court, and that a copy of the same will be served upon the Circuit Court and listed counsel of record by email:

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