

APPELLATE CASE NO. SC-2025-0918

IN THE SUPREME COURT OF ALABAMA

EX PARTE
STATE FARM FIRE AND CASUALTY COMPANY
Petitioner,

(IN RE: JAMES M. FOOR AND KRYSTINA FOOR V. STATE FARM
FIRE MUTUAL INSURANCE COMPANY)

ON PETITION FOR WRIT OF MANDAMUS FROM
THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA
CIVIL ACTION NO.: CV-2025-900001

**BRIEF OF AMICUS CURIAE,
UNITED POLICYHOLDERS IN OPPOSITION TO PETITIONER
STATE FARM FIRE AND CASUALTY COMPANY'S
PETITION FOR WRIT OF MANDAMUS**

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STATEMENT REGARDING ORAL ARGUMENT

Amicus curiae United Policyholders adopts Respondents' position regarding the desirability of oral argument in this matter. United Policyholders will not seek to participate in oral argument but is prepared to do so if requested by the Court.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Insurance policies provide financial security essential to the fabric of our economy and modern society. Adequate protection against the risk of financial loss is so important that our laws require individuals to purchase insurance coverage for many basic functions. From a policyholder's perspective, the integrity of their insurance safety net is paramount.

There is tension between consumer expectations and the business of insurance, which must be fundamentally concerned with profits and solvency. Insurers are able to elevate their interests by controlling the terms of coverage when drafting their policies – typically standardized forms filled with terms of art not readily understood by the consumer – and determining which claims get paid. The law responds to this dynamic by placing heightened obligations on insurers in the handling of insurance claims. Discovery of, and accountability for, unfair claims practices is critical to consumer policyholders and the insurance industry as a whole. United Policyholders (“UP”) is in a unique position to assist this Court in understanding the importance of these issues from the policyholders' perspective.

UP is a non-profit organization founded in 1991 that serves as an information resource and a voice for insurance consumers in all 50 states. Donations, foundation grants and volunteer labor support the organization's work, which is divided into three program areas: Roadmap to Recovery (helping disaster victims navigate the insurance claim process), Roadmap to Preparedness (promoting disaster preparedness and insurance literacy) and Advocacy and Action (advancing the interests of insurance consumers in courts of law, before regulators, legislators, and in the media). As advocate, UP has filed over 600 amicus briefs in state and federal courts nationwide, including numerous in Alabama.

SUMMARY OF THE ARGUMENT

Alabama has long entrusted the handling of discovery related matters, including the nature and extent of protective orders, to the sound discretion of its trial courts. Indeed, this Court has repeatedly held that a trial court has broad discretion in such matters and its ruling will not be reversed absent a *clear* abuse of discretion. The ruling in this matter, made after full briefing and argument, does not meet this stringent burden and should be upheld. There is nothing novel or shocking about the trial court's decision which notably was made after consideration of the extensive written and oral arguments from both parties.

State Farm and its Amici argue that the trial court's limited sharing provision is an "astonishing" departure from modern jurisprudence. They similarly allege that this single order will open the proverbial flood gates, making Alabama a "national outlier" and driving business outside the state lines. Despite admitting that sharing provisions can be appropriate, they nonetheless argue for a blanket prohibition of such provisions based on speculative and unsupported

claims of imminent widespread dissemination of State Farm's allegedly confidential information.

Contrary to these assertions, the trial court acted within its discretion and consistently with other similarly situated courts. After consideration of lengthy written and oral arguments, and based on the specific facts of this matter, the court found that a limited sharing provision was appropriate. In crafting the order, the court appropriately considered a policyholder's interest in obtaining relevant information, State Farm's interest in protecting public disclosure, and the undeniable goal of securing a just, speedy, and inexpensive determination in every action. This Court should find that the trial court acted within its discretion and deny the writ.

ARGUMENT

The trial court acted within its broad discretion in crafting a protective order that balances the interests of litigant policyholders and defendant insurers in extra-contractual "bad faith" cases. While providing typical safeguards, the order simply allows limited use by Plaintiff's counsel in a narrowly defined subset of similarly situated matters if appropriate. The order mandates adherence to the

confidentiality provisions of the order, prevents dissemination to the general public and/or competitors, and retains jurisdiction to enforce compliance with the contained terms. In doing so the court resolved the dispute in a manner that protects both parties while preserving construction of Ala. R. Civ. P. 1.

This balanced approach, based on the facts and circumstances of this particular case, promotes the right of policyholders to obtain relevant discovery in a timely and inexpensive manner while safeguarding State Farm's ability to protect truly confidential or trade secret documents from competitors. This approach prevents the gamesmanship often found in these types of cases and allows adherence to the foundation upon which the discovery system was built.

I. The trial court acted within its discretion and its order is consistent with similarly situated court decisions.

“The trial court has broad discretion in overseeing discovery and in protecting persons from whom discovery is sought.” *Ex parte Community Health Systems Professional Services, Corp.*, 72 So.3d 595, 603 (Ala. 2011). This discretion is “very broad”, warranting reversal only when a “clear abuse of discretion” is shown. *Ex parte Wal-Mart Stores, Inc.*, 682 So.2d 65, 67 (Ala.1996). As this Court has recognized, appellate courts

have a “fundamental disinclination” of intruding on the trial court’s responsibilities in conducting the litigation process. *Ex parte Cooper Tire & Rubber Company*, 987 So.2d 1090, 1101 (Ala. 2007).

State Farm urges this Court to issue a writ vacating the trial court’s order and disallowing information obtained in the instant litigation from being utilized in other similarly situated cases. *See* Amended Petition for Writ of Mandamus at 25-26. In essence State Farm requests this Court rule that any such “sharing” provision is impermissible under Alabama law regardless of the circumstances of that particular case. Such a result is antithetical to the long-standing principles outlined above. It is also at odds with its amici who admit they “do not doubt that discovery sharing may be appropriate in certain narrow circumstances.” *See* Brief of Amici Curiae Chamber of Commerce of the United States of America and American Tort Reform Association at 10.

There is no indication that the trial court in this matter made an uninformed decision. On the contrary, the order was only issued after extensive briefing and substantial oral argument addressing the merits from both sides. In consideration of the facts and circumstances presented by both sides, the court fashioned a ruling which promotes the

right of policyholders to obtain relevant discovery in a timely and inexpensive manner while safeguarding State Farm's ability to protect truly confidential or trade secret documents from competitors.

The limited "sharing provision" does not open the proverbial flood gates for public dissemination of State Farm's confidential information. The Order 1) precludes sharing information with State Farm's competitors; 2) permits disclosure to governmental regulators only after State Farm is given notice and an opportunity to seek confidential treatment; and 3) prohibits the sale or publication to any news outlet. (Doc.116, Protective Order, attached to Amended Petition as App'x H). It also mandates that any individual outside of counsel's office must agree in writing to be bound by the terms of the protective order prior to receiving any information whatsoever. *Id.* Such obligations continue even after the case is concluded and the court expressly reserves jurisdiction to enforce the terms of the order and punish noncompliance. *Id.* In sum, the trial court reviewed the facts, considered the arguments of both sides, and exercised its discretion by crafting an order favoring the broadest discovery while protecting State Farm's interests in keeping confidential and/or trade secret documents from its competitors.

State Farm and its amici may disagree with the decision, but it is far from the national outlier they claim. A vast array of decisions, many recent, confirm that such provisions were warranted for the same reasons argued by Plaintiff. *See, e.g., Royal Park Investments SA/NV v. Deutsche Bank Nat'l. Trust Company*, 192 F.Supp.3d 400 (S.D.N.Y. 2016); *Charter Oak Fire Ins. Co. v. Electrolux Home Products, Inc.*, 287 F.R.D. 130 (E.D.N.Y. 2012); *Sweet v. Polaris Industries, Inc.*, No. 3:21-CV-40076-MGM, 2022 WL 974139 (D. Mass. Mar. 31, 2022); *Bock v. Daimler Trucks North America, LLC*, No. 3:24-CV-30099-MGM, 2025 WL 3295525 (D. Mass. Nov. 26, 2025). Further, while there is an undeniable split in decisions on this matter, courts have not found an outright prohibition of “sharing” provisions. Instead, courts have ruled utilizing their own discretion based on the facts and circumstances presented in each particular case. *See, e.g., Menendez ex rel. Menendez v. Wal-Mart Stores East, LP*, No. 1:10-CV-53, 2012 WL 90140 (N.D. Ind. Jan 11, 2012) (noting that the sharing of discovery and collaboration among plaintiffs’ attorneys comes squarely within the purposes of the Federal Rules of Civil Procedure but denying the sharing provision because the plaintiff failed to show that other collateral lawsuits actually existed).

After considering the facts and arguments in this case, the trial court fashioned a decision to effectuate the needs of both parties. This decision was within the court's discretion and consistent with courts throughout the country in both procedure and result.

II. Sharing provisions promote fairness in the legal system, prevent gamesmanship, and promote the stated purpose of Ala. R. Civ. P. 1.

“The Alabama Rules of Civil Procedure allow broad and liberal discovery.” *Ex parte St. Vincent's Hosp.*, 991 So.2d 200, 208 (Ala. 2008) (citing *Ex parte O'Neal*, 713 So.2d 956, 959 (Ala. 1998)). While important to all litigants, discovery is critical to a policyholder's ability to prove an extra-contractual “bad faith” claim. This is especially so under Alabama's stringent intentionality standard. *Liberty Nat. Life Ins. Co. v. Allen*, 699 So.2d 138, 142 (Ala. 1997) (noting the “heavy” burden of proof placed on policyholders).

Largely at issue in this matter are State Farm's Operations Guides (“OG”) which undisputedly detail how policyholder claims will be handled. Assuming these documents indeed qualify as a trade secret, they undoubtedly go to the heart of an unfair claims practices case. *St. Paul Fire and Marine Ins. Co. v. Drummond Company, Inc.*, No. 2:11-CV-

02695-JEO, 2012 WL 12897960 *3 (N.D. Ala. May 1, 2012) (A claims manual or other training material. . . is obviously relevant to Drummond’s claim.); *Graham & Company, LLC v. Liberty Mutual Fire Ins. Co.*, No. 2:14-CV-02148-JHH, 2016 WL 1319697 *10 (N.D. Ala. April 5, 2016) (“Because Plaintiffs allege a bad faith cause of action, materials related to training policies and manuals may be relevant or lead to the discovery of admissible evidence.”). This Court has even cited State Farm’s training materials in finding bad faith on the part of the insurer. *See State Farm Fire & Cas. Co. v. Slade*, 747 So.2d 293, 315 (Ala. 1999) (citing the “Good Faith Claims Handling” video as evidence State Farm had deviated from its own procedures).

With the time constraints of modern litigation, and vastly limited resources compared to large corporate defendants, policyholders begin the discovery process on unequal footing with their opponents. Recognizing this imbalance as well as the potential significance of the materials to the merits of bad-faith claims, insurers have strong incentives to resist their production and to prolong discovery disputes. For an example of such conduct, the Court need only reference the Supreme Court’s opinion in *State Farm Mut. Auto. Ins. Co. v. Campbell*.

While the matter addresses the appropriate measure of punitive damages, Justice Ginsburg’s dissent outlines a troubling pattern of discovery abuses aimed at “insulating itself from liability” including destroying internal company documents such as “old claim-handling manuals, memos, claims school notes, procedure guides and other similar documents.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 434 (2003) (J. Ginsburg dissenting). Incredibly, this took place despite knowing that these materials had been specifically requested in the Campbell’s ongoing litigation. *Id.*

While *Campbell* is a particularly egregious example, it serves to highlight the unequal playing field in which policyholders operate in bad faith litigation. Restrictive protective orders, such as the one proposed by State Farm, serve only to increase this disparity. From the outset, it allows State Farm to force similarly situated policyholders and their attorneys to relitigate the exact same issue in each and every case. *Charter Oak Fire Ins. Co.*, 287 F.R.D. at 134. A costly and time-consuming practice which would run counter to the judicial efficiency required by Ala. R. Civ. P. 1 and would constitute an “enormous waste of

time and resources for the parties and the court.” *Id.* As noted by the Middle District of North Carolina:

The sharing of information between even diverse plaintiffs promotes speedy, efficient and inexpensive litigation by facilitating the dissemination of discovery material necessary to analyze one's case and prepare for trial. It reduces repetitious requests and depositions, thereby conserving even defendant's time and expense in having to respond or attend the deposition. It conserves judicial resources by reducing the number of discovery motions and disputes. Permitting plaintiffs to share information helps counterbalance the effect uneven financial resources between parties might otherwise have on the discovery process, thereby protecting economically modest plaintiffs faced with financially well off defendants and improving accessibility to justice. *Id.* Defendants will not be heard to complain that sharing information will burden their defending similar type lawsuits.

Burlington City Bd. Of Educ. v. U.S. Mineral Products Co., Inc., 115 F.R.D. 188, 190 (M.D.N.C. 1987).

Such a restrictive protective order would also increase the parties' inequality by limiting the ability of collaboration between counsel. Undoubtedly understanding the potential relevance of this information, State Farm is free to share its internal claims handling materials with its nationwide army of attorneys to strategize and formulate a collective

defense to policyholder bad faith cases. This collaboration undoubtedly assists in formulating its strategy and defense on both a company wide and case specific level. While collaboration among plaintiffs' attorneys comes squarely within the purposes of both the Alabama and Federal Rules of Civil Procedure, restrictive protective orders preclude this type of collaboration and further disadvantages the ability of policyholders to meet the high threshold set forth in this Court's bad faith requirements.

Notably, the collaboration between counsel is only minimally at issue in this matter since the circuit court's order only permits Foor's counsel to utilize the information in matters in which they are actively representing a similarly situated policyholder. Nonetheless, the underlying point evidences why this Court should find that appropriately tailored "sharing" provisions are appropriate and within the sound judgment of the trial courts overseeing the cases.

A functioning judicial system depends heavily on the ability of parties to obtain relevant information to meet their burden of proof. The system breaks when parties can gain an upper hand through discovery tactics aimed at preventing the truth from being revealed. Permitting limited sharing provisions, while protecting truly confidential and/or

trade secret materials from being revealed to competitors, balances the parties' respective interests and furthers fundamental fairness in our system and promotes a healthy insurance market upon which our society is increasingly reliant. See Sharon Tennyson & William J. Warfel, *The Law and Economics of First-Party Insurance Bad Faith Liability*, 16 Conn. Ins. L.J. 203, 217–18 (2009) (noting that insurance bad faith laws serve the broader economic purpose of enhancing the efficiency of insurance contracting and reducing market demand for bad actors to the benefit of both policyholders and insurers alike).

CONCLUSION

For the foregoing reasons this Court should deny State Farm's petition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the font and word limitations of Rules 21(d), 29(c), and 32(a)(7). According to the word-count function in Microsoft Word, the pertinent parts of this document contain 2,513 words. This document uses Century Schoolbook font in 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Brief of Amicus Curiae United Policyholders was electronically filed on the 19th day of February, 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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