

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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DISTRICT COURT

OKLAHOMA COUNTY, OKLAHOMA

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RICK WARREN, COURT CLERK

Case Number CJ-2025-2626

BILLY and LACY HURSH,)
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 Plaintiffs,)
)
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 v.)
)
)
 STATE FARM FIRE & CASUALTY)
 COMPANY; MARK D. WELTY; and MARK D.)
 WELTY INS. AGENCY, INC.,)
)
)
 Defendants.)

Case No. CJ-2025-2626

**DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY’S
BRIEF IN SUPPORT OF APPLICATION OF ATTORNEY-CLIENT
PRIVILEGE AND WORK PRODUCT PROTECTIONS TO HUR00158701-19**

This dispute concerns limited redactions in a group of emails and drafts totaling 19 pages. State Farm has produced the underlying Senior Executive Offsite Memo (the “SEO Memo”) and all nonprivileged portions of the related documents. It seeks to protect only confidential communications requesting or providing legal advice and counsel’s protected work product. The Court can resolve the dispute by answering three straightforward questions. First, do the redactions reveal confidential requests for legal advice or legal advice provided by State Farm’s attorneys? They do. Second, do the attorneys’ comments reflect work performed in anticipation of litigation? They do. Third, did State Farm waive those protections by inadvertently producing versions with incomplete redactions? Under 12 O.S. § 2502(E), it did not. Plaintiffs invoke the crime-fraud exception to try to vitiate the privilege, but that exception applies only when a client seeks or obtains a lawyer’s services to help commit or plan a crime or fraud. Plaintiffs offer no evidence that State Farm sought legal advice for that purpose, which of course it did not.

The 19 pages contain two email chains and two versions of the same draft SEO Memo. One version shows attorneys Tim Marron’s and Mark Cavanaugh’s comments primarily in comment bubbles and tracked changes. The other is a later draft circulated by State Farm employee Scott Welsh. The disputed redactions cover the lawyers’ advice, Welsh’s requests for that advice, and internal communications relaying the advice. They do not conceal the underlying memorandum, which State Farm has produced. These limited attorney communications are squarely privileged. Yet, Plaintiffs have capitalized on inadvertently missed redactions, using those inadvertently produced versions in depositions and court filings even after State Farm properly clawed them back pursuant to 12 O.S. §§ 3226(B)(5)(b) & 2502(E).

State Farm respectfully requests an Order from this Court: (1) upholding State Farm’s privilege over redacted portions of HUR00158701-19; (2) striking references in this case and in

depositions to the versions of those documents with incomplete redactions; and (3) ordering Plaintiffs' counsel to (a) return, sequester, or destroy all copies of HUR00158702-09 and HUR00158712-19 (which have been clawed back) in their possession, custody, or control, and (b) cease further use or disclosure of the privileged information contained in these documents. If the Court finds that any redacted portion of HUR00158701-19 is not privileged, State Farm requests a stay of any such ruling to prevent further dissemination of State Farm's privileged materials and allow State Farm a meaningful opportunity to seek Supreme Court review.

RELEVANT BACKGROUND

Scott Welsh is a Director of P&C Claims Consulting at State Farm. *See* Ex. 1, Dec. of Scott Welsh ("Welsh Dec.") ¶ 2. Mark Cavanaugh is an in-house attorney employed by State Farm and Tim Marron is a retired in-house attorney who was employed by State Farm at the relevant time. On October 22, 2021, Welsh sent a draft Senior Executive Offsite memo to attorney Marron for legal review and advice. *See* Ex. 2, Dec. of Mark Cavanaugh ("Cavanaugh Dec.") ¶ 6; Ex. 1, Welsh Dec. ¶ 3. At that time, litigation concerning State Farm's handling of wind or hail claims was pending, and other potential litigation was reasonably anticipated. *See* Ex. 2, Cavanaugh Dec. ¶ 7. Against that backdrop, Welsh asked the Law Department to review the draft and provide legal advice concerning the legal implications of language in the Memo. Ex. 1, Welsh Dec. ¶¶ 5-6.

On October 26, 2021, attorney Marron emailed the draft SEO Memo back to Welsh, cc'ing attorney Cavanaugh, with comments from both attorneys under a cover email marked "Privileged and confidential Attorney client communication." *See* HUR00158711. Attorney comments were added using Microsoft Word comment bubbles, Microsoft track changes, and also were inserted in the text of the memo. Later that day, Scott Welsh sent a revised version of the draft SEO Memo back to attorneys Marron and Cavanaugh to obtain more legal advice. *See* Ex. 2, Cavanaugh Dec.

¶ 9. Cavanaugh responded to Welsh with an email conveying legal advice that he marked “PRIVILEGED AND CONFIDENTIAL[,] ATTORNEY CLIENT COMMUNICATION[,] ATTORNEY WORK PRODUCT.” *See* HUR00158710; *id.* Welsh then forwarded the email from Cavanaugh back to himself, attaching the draft SEO Memo that contained the attorneys’ comments reflecting legal advice. *See* HUR00158712-191; *see also* Ex. 1, Welsh Dec. ¶¶ 7-9.

The same day, Welsh emailed four peers regarding the SEO Memo. *See* HUR00158701 (cover email). Welsh attached the following: (a) a revised version of the draft SEO Memo which still included certain legal advice and explicit comments from the attorneys (HUR00158702-09); and (b) the email that Welsh forwarded to himself attaching the attorneys’ legal comments and revisions (HUR00158710-19). Welsh’s email to his peers specifies that the draft SEO Memo he attached contained recommendations from State Farm’s Law Department. *See* HUR00158701 (cover email). Welsh’s revised draft memo incorporating the legal advice he received still shows a legal comment directly left by attorney Cavanaugh (deleted but still visible through track changes), notations using colored and stricken text to show what the attorneys specifically advised, bracketed comments written by the attorneys, and a margin comment conveying what the “Law Department recommends.” (HUR00158712-19). *See* Ex. 1, Welsh Dec. ¶¶ 10-11.

State Farm has produced over 117,000 documents in this case, in addition to more than 600,000 documents that State Farm reproduced from prior cases that settled. Ex.3, Declaration of Laura Siff (“Consilio Dec.”) ¶¶ 4, 6. To do so, State Farm devoted substantial resources to conducting a large-scale document review to determine responsiveness and privilege. State Farm’s review procedures included a first-level attorney review performed by contract attorneys, a second-level attorney review performed by State Farm’s outside counsel, and quality-control procedures to audit the first and second level attorney reviews. *Id.* ¶¶ 4-5. State Farm gave reviewing attorneys

detailed instructions on how to identify privileged communications and attorney work product, including examples of privileged materials, and instructed them to apply redactions narrowly and produce non-privileged portions where practicable. Reviewers used an electronic review platform, and State Farm’s vendor programmed the platform to highlight attorney names and terms commonly associated with privileged material to assist in the review. *Id.* ¶ 5.

State Farm learned that it inadvertently produced two versions of the draft SEO Memo (HUR00158702-09 and HUR00158712-19) with incomplete privilege redactions. State Farm learned of its inadvertent disclosure of privileged information in the context of another case, *West v. State Farm Fire & Cas. Co.*, No. CJ-2025-135 (Comanche Cty.) (“*West*”), where State Farm produced the same documents (labeled WEST00158702-09 and WEST00158712-19 in that case). Specifically, on September 17, 2026, Plaintiffs’ counsel in *West*—the same counsel who represent Plaintiffs in this case—marked WEST00158701-09 as Exhibit 133 during their deposition of Wensley Herbert in *West*. During the deposition, State Farm’s counsel promptly notified Plaintiffs’ counsel that Exhibit 133 might contain inadvertently disclosed privileged communications and information, and that State Farm was investigating further. W. Herbert Tr. (West) 310:22-311:7. The very next day, Plaintiffs’ counsel attached WEST00158702-09 as an exhibit to a court filing wholly unrelated to the document. *West*, 9/18/2026 Reply to Mot. to Compel.

Following Mr. Herbert’s deposition, State Farm investigated whether it had inadvertently disclosed privileged information and confirmed that it did. State Farm also determined that it had inadvertently produced the incorrectly redacted documents in this case as HUR00158702-09 and HUR00158712-19. On September 22, 2026, State Farm sent Plaintiffs’ lead counsel, Reggie Whitten, a letter notifying Whitten that State Farm inadvertently produced two draft SEO Memos (WEST00158702-09 and WEST00158712-19) with unredacted privileged content, and that

Whitten and his firm had an obligation pursuant to 12 O.S. §§ 3226(B)(5)(b) and 2502(E) to destroy all copies thereof. Pls. Not. Ex. 24. State Farm also asked Whitten to voluntarily strike portions of Herbert's deposition testimony regarding the privileged material. State Farm told Whitten that it would correct the redactions and reproduce the documents.

Plaintiffs did not comply with § 3226(B)(5)(b) or State Farm's clawback request. Instead, the next day, on September 23, 2026, in this case, Plaintiffs' counsel filed HUR00158701-19 as Exhibit 14 to Plaintiffs' Notice of Supplemental Authority Regarding Plaintiffs' Motion to De-Designate ("Notice"), purportedly to support their efforts to de-designate certain documents that State Farm produced as confidential. Not only did Plaintiffs attach a clawed-back document to their filing, but they also quoted Mr. Herbert's deposition testimony in *West* discussing the privileged information and even pasted into their brief portions of HUR00158702-09. *See* Pls. Not. at 7, 9-10. Then, on September 29, 2026, Plaintiffs' counsel used HUR00158701-09 again in this case as an exhibit while deposing State Farm corporate representative Wayne Stewart. Plaintiffs ask the Court to find that none of the information or communications in HUR00158701-19 are protected by the attorney-client privilege or work product doctrine. Plaintiffs are wrong. The Court has allowed State Farm to file this brief, substantiating its privilege claims.

ARGUMENT

I. The Attorney-Client Privilege Protects the Redacted Material from Disclosure

Section 2502(B) protects confidential communications made for the purpose of obtaining or providing professional legal services. The privilege shields the client's confidential disclosures and attorney advice. *Sims v. Travelers Ins. Co.*, 2000 OK CIV APP 145, ¶ 8, 16 P.3d 468, 470. These protections encompass confidential communications relaying privileged advice among non-attorney employees of a company. *See Moffatt v. Wazana Bros. Int'l*, No. CIV.A. 14-1881, 2014

WL 5410201 (E.D. Pa. Oct. 24, 2014) (“The intra corporate distribution of legal advice received from counsel does not vitiate the privilege”). To sustain its assertion of privilege, State Farm must prove that the conditions necessary for the privilege are more probably true than not. 12 O.S. § 2105(B). As explained below, the documents and declarations establish that the redacted material consists of confidential communications seeking, providing, and conveying legal advice.

“The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.” *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). “Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice.” *Id.* Unlike individuals, corporations “constantly go to lawyers to find out how to obey the law,” and respecting privilege in the corporate setting encourages “the valuable efforts of corporate counsel to ensure their client’s compliance with the law.” *Id.* at 392.

On October 22, 2021, Welsh asked State Farm’s Law Department to provide legal advice concerning the draft SEO Memo. *See* Ex. 2, Cavanaugh Dec. ¶ 6; Ex. 1, Welsh Dec. ¶ 3. In light of litigation challenging State Farm’s handling of wind and hail claims, Welsh asked counsel to evaluate the legal implications of language used in the draft to describe those practices. Ex. 2, Cavanaugh Dec. ¶ 7; Ex. 1, Welsh Dec. ¶¶ 5-6. The business personnel responsible for the SEO Memo remained responsible for the underlying practices and the SEO Memo’s factual and business substance. Ex. 1, Welsh Dec. ¶¶ 4, 7-9. Cavanaugh and Marron responded in their capacities as attorneys through confidential emails and comments in the draft. Their comments applied legal judgment to language in the SEO Memo and conveyed counsel’s resulting legal analysis and recommendations. *Id.* ¶¶ 8-9; Ex. 2, Cavanaugh Dec. ¶¶ 8-9. They were shared only with State Farm employees responsible for requesting, receiving, or acting on that advice. The privilege

protects each step in that process. It protects Welsh's request for legal advice, Cavanaugh's and Marron's responses, the attorneys' comments embedded in the draft, and Welsh's confidential communication of their recommendations to the State Farm employees responsible for the SEO Memo. *See* 12 O.S. § 2502(A)(4)-(5), (B)(1), (B)(4). The fact that counsel provided advice through comments and proposed revisions to a draft does not make the advice any less privileged.

Motley v. Marathon Oil Co., 71 F.3d 1547 (10th Cir. 1995), is directly analogous. There, in-house counsel advised a corporation through a draft internal memorandum concerning a reduction in force. The plaintiff argued that the documents reflected ordinary business activity rather than legal advice. The Tenth Circuit upheld the privilege because counsel established that the draft contained legal advice, related materials were prepared for counsel's use in giving that advice, and the documents were maintained as confidential. *Id.* at 1550-51. Likewise here, the documents and the Cavanaugh Declaration establish that Welsh requested legal advice, Cavanaugh and Marron responded as attorneys, and the resulting communications were treated as confidential.

Nor does the presence of business information in the draft deprive counsel's communications of protection. In *Sustainable Journalism Found. v. State ex rel. Board of Regents of the University of Oklahoma*, the Oklahoma Supreme Court upheld the privilege for reports that included factual information and investigative results together with counsel's legal analysis, opinions, advice, and mental impressions. 2026 OK 2, ¶¶ 13-14. The relevant question is whether the withheld communications were made to obtain or provide legal advice—not whether the document in which they appear also addresses business matters.

The particular redactions satisfy that standard. The original redactions to HUR00158710-11 protect Welsh's communications with Cavanaugh and Marron. The original redactions to HUR00158701 protect Welsh's confidential communication of their recommendations to the

employees responsible for considering them. The corrected redactions to HUR00158712-19 and HUR00158702-09 protect counsel's comments embedded in the draft SEO Memo. State Farm has produced the remainder of the documents, including the SEO Memo's underlying discussion of State Farm's claim-handling practices. Because its original and corrected redactions are limited to communications seeking, providing, or conveying legal advice, the Court should uphold them.

II. The Work Product Doctrine Protects the Redacted Material from Disclosure

The work product doctrine, codified under Oklahoma law, protects “documents and tangible things that are prepared in anticipation of litigation or for trial,” with heightened protection for “the mental impressions, conclusions, opinions or legal theories of a party’s attorney.” 12 O.S. § 3226(B)(3)(a)-(b). “For the anticipation of litigation threshold to be met, the primary motivating purpose behind creation of a document or investigative report must be in aid of possible future litigation, although litigation need not be imminent at the time of the document’s creation.” *Heffron v. Dist. Ct. Oklahoma Cnty.*, 2003 OK 75, 77 P.3d 1069 (citation omitted).

Parties may obtain work product materials where the materials “are otherwise discoverable” and “the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.” 12 O.S. § 3226(B)(3)(a). However, “the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party’s attorney.” 12 O.S. § 3226(B)(3)(b). Here, setting aside Plaintiffs’ failure to show a substantial need for the redacted information, counsel’s redacted comments reflect “mental impressions, conclusions, opinions, and legal theories,” such that the Court “shall protect against disclosure” of this information.

As set forth in the Cavanaugh Declaration, attorneys Cavanaugh and Marron reviewed the draft SEO Memo and provided advice (redacted portions of HUR00158712-19 and

HUR00158702-09) in anticipation of pending and reasonably anticipated litigation. By October 2021, wind and hail litigation was pending and reasonably anticipated. *See* Ex. 2, Cavanaugh Dec. ¶ 7; Ex. 1, Welsh Dec. ¶¶ 5-6. The redacted advice reflect the attorneys' mental impressions and legal analysis concerning issues implicated by that litigation. *See e.g.*, HUR00158713 (redline comment from Cavanaugh). Cavanaugh also cited work product protection in his email. (HUR00158710.) Because the redacted comments reveal counsel's litigation-related mental impressions and legal analysis, they are work product under 12 O.S. § 3226(B)(3)(b).

III. The Crime-Fraud Exception Does Not Apply

The crime-fraud exception is a narrow exception to the attorney-client privilege that applies when a client seeks or obtains a lawyer's services to help commit or plan conduct that the client knew or reasonably should have known was a crime or fraud. 12 O.S. § 2502(D)(1). A client may seek legal advice, but may not use a lawyer to help carry out a crime or fraud. The central question is why the client sought the lawyer's services. Allegations of fraud alone cannot pierce the attorney-client privilege. *Cooper v. State*, 1983 OK CR 154, ¶ 4, 671 P.2d 1168, 1172. Plaintiffs bear the burden of proving the exception. Under Oklahoma law, "[a] person claiming an exception to a privilege must prove that the conditions prerequisite to the applicability of the exception are more probably true than not." 12 O.S. § 2105(B); *Sustainable Journalism Found. v. State ex rel. Board of Regents of the University of Oklahoma*, 2026 OK 2, ¶ 17 n.3. Specifically, to establish the crime-fraud exception here, Plaintiffs must prove that: (1) State Farm was committing or planning specific conduct constituting a crime or fraud; (2) State Farm knew or reasonably should have known that the conduct was a crime or fraud; and (3) State Farm sought or obtained the attorneys' services to enable or aid that conduct. Each fact must be more likely true than false. Failure to prove any one defeats the exception. Plaintiffs have not met their burden because their

bad faith and constructive fraud claims are only allegations, the existence of which does not prove, more probably than not, that State Farm committed or planned a crime or fraud.

The Court need not decide that issue, however, because Plaintiffs' argument independently fails the third element. Even if the Court assumes for purposes of this privilege dispute that the conduct Plaintiffs challenge could constitute fraud, Plaintiffs must still prove that State Farm sought the attorneys' services to enable or aid that fraud. Two Oklahoma decisions illustrate the evidence required to satisfy this requirement. In *Keller v. State*, the exception applied because the client sought advice about "getting rid of" the victim, including asking whether he should bring in a former employee—whom the attorney identified as a "hit man out of Chicago"—to handle the matter. 1982 OK CR 159, ¶¶ 5–7, 14–16, 651 P.2d 1339, 1341–42. Those contemporaneous statements directly connected the contemplated crime to the client's purpose in seeking the attorney's advice. In *Cooper v. State*, by contrast, the exception did not apply where the only asserted connection was an allegation that the client committed perjury thirteen years after consulting an attorney. 1983 OK CR 154, ¶ 4, 671 P.2d 1168, 1172. That later alleged wrongdoing did not show that the client had consulted the attorney to enable or aid a crime or fraud.

This case lacks the connection present in *Keller*. Plaintiffs identify no communication in which Welsh asked Cavanaugh or Marron to make a false statement, conceal a fact, or assist in unlawful claim-handling practices. They rely instead on the fact that the SEO Memo discusses practices they challenge and that attorneys commented on its language. But an allegation that the client engaged in wrongful conduct, even when coupled with legal advice concerning the same general subject, does not establish that the client sought the advice to enable or aid that conduct. And advice about a document that Plaintiffs (wrongly) contend discussed allegedly wrongful conduct is not the same as advice sought to enable or aid that conduct. Thus, as in *Cooper*,

Plaintiffs’ failure to establish the client’s intent in seeking legal advice and to connect the legal advice to any alleged crime or fraud is fatal to Plaintiffs’ crime-fraud arguments. 1983 OK CR 154, ¶ 4 (evidence that client consulted attorney and subsequently committed perjury was insufficient to establish applicability of crime-fraud exception); *see Action Performance Co., Inc. v. Bohbot*, 420 F. Supp. 2d 1115, 1119 (C.D. Cal. 2006) (“[T]he [proponent] must also establish a reasonable relationship between the fraud and the attorney-client communication.”).

Plaintiffs’ reliance on Oklahoma Rule of Professional Conduct 1.6 does not alter that conclusion. Oklahoma Rule of Professional Conduct 1.6, which explains when a lawyer “can reveal information relating to the representation of a client” is not relevant because it addresses attorney ethical obligations, not crime-fraud exception standards, and addresses when an attorney can disclose a client’s confidential information, not on whether an attorney *must* disclose confidential information in response to a discovery request.¹

IV. State Farm’s Inadvertent Disclosures Should Not Result in Privilege Waiver

“A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if: 1. The disclosure was inadvertent; 2. The holder of the privilege took reasonable steps to prevent disclosure; and 3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, [work product materials].” 12 O.S. § 2502(E). For context, in any document review of the scale at issue here, it is possible—and in fact probable—that the review team will make mistakes, hence the need for

¹ Plaintiffs cite no Oklahoma cases establishing that an insurer’s alleged bad faith claim handling qualifies as a fraud under the crime-fraud exception and State Farm has not found any Oklahoma cases addressing this issue. Several courts have held, however, that bad faith denial of an insurance claim does not qualify as a “fraud” for purposes of the crime-fraud exception. *See, e.g., State ex rel. U.S. Fid. & Guar. Co. v. Montana Second Jud. Dist. Ct.*, 783 P.2d 911 (Mont. 1989); *Kujawa v. Manhattan Nat’l Life Ins. Co.*, 541 So. 2d 1168 (Fla. 1989); *Freedom Trust v. Chubb Group of Ins. Cos.*, 38 F. Supp. 2d 1170, 1173 (C.D. Cal. 1999).

statutes like 12 O.S. § 2502(E). *See, e.g., Malone v. Kantner Ingredients, Inc.*, No. 4:12CV3190, 2015 WL 1470334, at *3 (D. Neb. Mar. 31, 2015) (“[H]uman error is common when attorneys are tasked with personally reviewing voluminous electronically stored information.”) (citing *Sedona Conference Best Practices Commentary on the Use of Search and Information Retrieval Methods in E-Discovery, Public Comment Version*, 8 Sedona Conf. J. 189, 204 (August 2007)); *In re Sulfuric Acid Antitrust Litig.*, 235 F.R.D. 407, 417 (N.D. Ill.), *supplemented*, 432 F. Supp. 2d 794 (N.D. Ill. 2006) (“Where discovery is extensive, mistakes are inevitable and claims of inadvertence are properly honored so long as appropriate precautions are taken.”) (citing *Golden Valley Microwave Foods, Inc. v. Weaver Popcorn Co., Inc.*, 132 F.R.D. 204, 207 (N.D.Ind.1990)). Section 2502(E) recognizes that an inadvertent error does not waive privilege when the producing party used reasonable precautions and acted reasonably to correct the error. As explained below, State Farm satisfies all three statutory requirements.

A. Disclosure of Privileged Information in HUR00158712-19 and HUR00158702-09 Was Inadvertent

As set forth above, reviewers inadvertently failed to redact privileged portions of HUR00158702-09 and HUR00158712-19. Their deficient redactions are understandable. First, with respect to HUR00158702-09 (the version of the SEO Memo containing attorney comments that Welsh forwarded to his peers on 10/26/21 at 5:43 pm), that document viewed in isolation does not clearly attribute the legal advice to an attorney because Welsh had edited the document, deleting Marron’s comment bubbles and deleting most of Cavanaugh’s in-line comments. However, some attorney comments remained. For example, in one instance, Welsh deleted an in-line comment from an attorney with track changes on, such that Cavanaugh’s comment remained visible but appeared to be struck through by Welsh. Accordingly, a reviewer could have mistaken the deleted comments as having been made by non-attorney Welsh, who had forwarded

HUR00158702-09 to his peers. Only by reviewing the full family of documents together, particularly HUR00158710-11 (the emails exchanged among Welsh and attorneys Cavanaugh and Marron, where the attorneys provided their legal advice to Welsh) and HUR00158712-19 (the version of the draft SEO Memo that the attorneys emailed to Welsh on 10/26/2021 at 11:39 am, which Welsh then forwarded to himself at 5:33 pm the same day), does it become clear that the deleted comments visible in track changes were actually privileged legal advice from attorney Cavanaugh. Although reviewers are instructed to consult full families of documents to inform privilege calls, their failure to recognize Cavanaugh's comments in HUR00158702-09 as privileged was understandable and inadvertent.

In reviewing HUR00158702-09 to confirm whether State Farm had inadvertently disclosed privileged content, State Farm determined that redactions to the draft SEO Memo (produced at HUR00158712-19) containing comments from the attorneys that Cavanaugh sent to Welsh, and Welsh subsequently forwarded to himself, also required revisions. In particular, the reviewers for this document applied potentially overbroad redactions, which State Farm wanted to correct. Also, while reviewers redacted 17 attorney comments throughout HUR00158712-19, they missed one comment on the bottom of HUR00158712 and one comment near the top of HUR00158713 that should have been redacted. State Farm thus clawed back HUR00158712-19 to more narrowly tailor the redactions, and to add two redactions to privileged material. The reviewers' failure to redact two attorney comments in an eight-page document containing attorney comments throughout was inadvertent and not an intentional waiver of State Farm's privilege, particularly given the magnitude of the review that State Farm undertook.

Courts routinely find that reviewers' mistakes are inadvertent in similar circumstances. In *Absolute Activist Value Master Fund Ltd. v. Devine*, the court found that an attorney took

reasonable precautions to prevent inadvertent disclosure and produced documents inadvertently where “it [wa]s not readily apparent from the face of the documents that they [we]re privileged or confidential—only a more thorough examination with the documents explained in their proper context demonstrate[d] the privileged nature of the documents.” 262 F. Supp. 3d 1312, 1325 (M.D. Fla. 2017). As in *Absolute*, the source of the legal advice in the draft SEO Memo produced as HUR00158702-09 is not readily apparent from the face of the document, and the privileged nature of certain comments therein is apparent only upon a more thorough examination of its context. Also, in *In re Sulfuric Acid Antitrust Litig.*, the court found that a document was inadvertently unredacted where the producing party had previously redacted the material on four occasions. 235 F.R.D. at 417 (“The 1994 report was produced on four previous occasions, with pages 9–11 redacted. Obviously, the production of the single unredacted copy was inadvertent.”) (citing *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F.3d 1122, 1126–27 (7th Cir. 1997)). Likewise, here, in HUR00158712-19, State Farm redacted the content that reviewers inadvertently failed to redact in HUR00158702-09, establishing State Farm’s intent to assert privilege.²

More generally, courts routinely recognize that reviewers make mistakes in large-scale document reviews, and that such mistakes do not constitute waiver of privilege. *E.g.*, *Kaneka Corp. v. Cocystal Tech. (Jiaxing) Co.*, 801 F. Supp. 3d 164, 172 (E.D.N.Y. 2025) (“Even if one focuses only on the size of the 300-page production in which the Disputed Documents were produced, the dozen privileged pages among 300 pages of documents is an error that might occur in any modern civil litigation.”); *In re Nat. Gas Commodity Litig.*, 229 F.R.D. 82, 89 (S.D.N.Y. 2005) (“Courts have routinely found that where a large number of documents are involved, there

² State Farm also redacted this same content in three versions of the SEO Memo produced in *Foster v. State Farm Fire & Cas. Co.*, No. CJ 2023-1425 (Cleveland Cty.), among other matters.

is more likely to be an inadvertent disclosure rather than a knowing waiver.”). As courts recognize, “it is virtually impossible to avoid any error whatsoever in dealing with large volumes of discovery material.” *In re Nat. Gas Commodity Litig.*, 229 F.R.D. at 89 (quoting *United States v. Rigas*, 281 F.Supp.2d 733, 741 (S.D.N.Y. 2003)). In this case, State Farm has reviewed more than 600,000 documents (excluding claim files and prior productions). The small number of mistakes identified to date in relation to the large volume of the review and production weighs heavily in favor of finding inadvertence. *Id.* The Court should find that State Farm’s production of HUR00158702-09 and HUR00158712-19 with incomplete redactions was inadvertent.

B. State Farm Took Reasonable Steps to Prevent Disclosure

Courts have long recognized that “[a] two-layer system of pre-production review—in which relatively ministerial determinations are made by employees of the producing party or by clerks, paralegals, or inexperienced associates employed by a law firm, and in which the final decision about what documents should or should not be produced is made by experienced in-house or outside lawyers” constitutes reasonable steps to prevent inadvertent disclosures. *U.S. ex rel. Bagley v. TRW, Inc.*, 204 F.R.D. 170, 179 (C.D. Cal. 2001) (“Punishing defendant for adopting this common, reasonable, and cost-effective strategy would not make sense. It also would unwisely discourage other litigants from adopting an economical procedure in the future.”); *United States v. United Health Grp., Inc.*, No. CV 16-8697 FMO (SSX), 2020 WL 10731257, at *4 (C.D. Cal. Nov. 9, 2020) (reasonable steps were taken where producing party conducted “eyes-on” privilege review and more limited review during a compressed, court-ordered re-review). Even where parties do not conduct the two-level review that State Farm did here, courts have found precautions were reasonable when “proper quality assurance testing” was used. *Rhoads Indus., Inc. v. Bldg. Materials Corp. of Am.*, 254 F.R.D. 216, 224 (E.D. Pa.), *clar’d by*, 254 F.R.D. 238 (E.D. Pa. 2008).

In this case, State Farm employed at least two levels of attorney review, and indeed, multiple attorneys reviewed HUR00158702-09 and HUR00158712-19 prior to their production. Ex.3, Consilio Dec. ¶¶ 4-5. In addition, State Farm performed layers of quality control to ensure its privilege claims could be as accurate as possible, including running targeted searches for key legal personnel, performing audits and consistency checks both within the *Hursh* production as well as other matters with similar productions, and performing an additional level of review before logging documents on its privilege log. *Id.* Under modern standards for document review and production, State Farm undeniably took reasonable steps to prevent disclosure of the privileged material at issue.

C. State Farm Took Reasonable Steps to Rectify the Error

Courts find that parties have taken reasonable steps to rectify inadvertent disclosures when they promptly notify opposing counsel. *In re EpiPen MDL*, 2021 WL 2875514 (D. Kan. 2021) (clawback was timely where notice was sent two days after privilege issue arose during deposition in related case); *Laethem Equipment Co. v. Deere & Co.*, 261 F.R.D. 127 (E.D. Mich. 2009) (party diligently rectified inadvertent disclosure notwithstanding three-week delay attributable to awaiting a court order); *Southampton, Ltd. v. Salalati*, No. CIV-14-852-M, 2016 WL 6693562 (W.D. Okla. Nov. 14, 2016) (four-day demand for return constituted reasonable steps to rectify).

State Farm learned that it had possibly disclosed privileged information on September 17, 2026, when Plaintiffs' counsel marked the version of HUR00158701-09 produced in *West* as Exhibit 133 at the Herbert deposition in *West*. For the reasons described above, looking at this document in isolation at the deposition, State Farm's counsel could not immediately determine the author of the potentially privileged comments to definitively assert that they were privileged. Nevertheless, State Farm advised counsel for the *West* plaintiffs—the same counsel who represent

Plaintiffs in this case—on the record, that the version of HUR00158701-09 produced in *West* may contain inadvertently disclosed privileged content. State Farm promptly investigated the document and, upon reviewing it in its full context, determined that it indeed contained privileged content that had been inadvertently disclosed. State Farm also reviewed its productions in cases dating back to 2021, as well as deposition transcripts from 2024 to present, to determine the extent of the inadvertent disclosure to assess potential waiver.³ Outside counsel for State Farm additionally consulted with in-house counsel for State Farm (the holder of the privilege) to ensure that the inadvertently disclosed comments—as well as other redacted comments—were made for the purpose of obtaining/providing legal advice and/or in anticipation of litigation, and were therefore protected by the attorney-client privilege and work product doctrine. On September 22, 2026, State Farm sent a letter to lead counsel in this case, Reggie Whitten, notifying counsel that State Farm had inadvertently disclosed privileged information and communications and was clawing back these two versions of the draft SEO Memo. Under the circumstances, State Farm acted as expediently as possible and took reasonable steps to rectify the error.⁴

V. The Court Should Strike References to Privileged Content in This Case

Attorneys notified of an inadvertent disclosure of privileged information have a legal obligation to return or destroy the documents subject to a claim of privilege and to stop using the documents. Specifically, Oklahoma law expressly provides that:

If information produced in discovery is subject to a claim of privilege or of

³ As set forth above, State Farm determined at that time that it had also inadvertently disclosed privileged content in its production of the version of HUR00158712-19 that it produced in *West*.

⁴ The formal claw back letter in this case was sent on September 29, 2026. However, as Plaintiffs' counsel concede in their Notice, they are well aware that HUR00158702-09 and WEST00158702-09 are the same document, as are HUR00158712-19 and WEST00158712-19, and that State Farm invoked the protections afforded by 12 O.S. §§ 3226(B)(5)(b) and 2502(E) with respect to both documents, requiring Whitten Burrage to destroy all copies, which they did not do. Pls. Not. at 6 (“State Farm now seeks to claw back Exhibit 133”) and Ex. 24.

protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. ***After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies the party has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party has disclosed it before being notified;*** and may promptly present the information to the court under seal for a determination of the claim.

12 O.S. § 3226(B)(5)(b) (emphasis added). As the law states, a party “shall not use or disclose the information until the claim [of privilege] is resolved,” regardless of whether they believe the claim is invalid. See *Raymond v. Spirit AeroSystems Holdings, Inc.*, No. 16-1282-JTM, 2017 WL 2831485, at *15 (D. Kan. June 30, 2017) (faced with a claw-back request, “[i]t was not Plaintiffs’ prerogative to unilaterally determine whether the information received anonymously was truly proprietary, confidential, privileged, or some combination of those labels, and use the information it deemed appropriate”) (quoting *Radiance Aluminum Fence, Inc. v. Marquis Metal Material, Inc.*, 335 F.R.D. 371, 377 (E.D. Mich. 2020)); *McDermott Will & Emery LLP v. Superior Court*, 10 Cal. App. 5th 1083 (2017) (affirming disqualification of counsel who used inadvertently disclosed privileged material without notifying the privilege holder). When counsel ignore their obligations regarding privileged materials, courts strike improperly filed materials and order counsel to return or destroy any copies of the material remaining in their possession. See *Radiance Aluminum Fence, Inc. v. Marquis Metal Material, Inc.*, 335 F.R.D. 371, 377 (E.D. Mich. 2020).

Plaintiffs’ improper use of State Farm’s inadvertently disclosed privileged documents is egregious. Once notified that a document contains privileged information, counsel cannot even review the document, much less continue to file it and bring copies of it to a deposition. *Greater New York Taxi Ass’n v. City of New York*, No. 13-CV-3089(VSB)(RWL), 2018 WL 2316629, at *6 (S.D.N.Y. May 8, 2018) (“Upon being notified that the documents were privileged, Plaintiffs should have immediately ceased their review of the clawed back documents.”). Despite receiving

State Farm's notice of inadvertent disclosure, Plaintiffs filed a copy of HUR00158702-09 on the record, pasted portions of it within the body of their Notice, and marked it as an exhibit at Stewart's deposition on September 29, 2026.⁵ Counsel's use of HUR00158702-09 was not for the allowed purpose of presenting the information under seal to the Court for a determination of the privilege claim. *See* 12 O.S. § 3226(B)(5)(b). Counsel's conduct plainly violates § 3226(B)(5)(b).

VI. Alternatively, the Court Should Stay Its Ruling to Allow State Farm Time to Seek Supreme Court Review

Should the Court determine that any redacted portions of HUR00158701-19 are not privileged, State Farm respectfully requests that the Court simultaneously stay the effectiveness of its ruling to permit State Farm an opportunity to seek Supreme Court review. *See also Howe v. Farmers' & Merchants' Bank*, 1932 OK 55, ¶ 14, 8 P.2d 665, 667. The Court may consider, in granting such stay, the "likelihood of success on appeal," the "threat of irreparable harm to [the] moving party if relief is not granted," any "potential harm to the opposing party," and any "risk of harm to the public." Okla. Sup. Ct. R. 1.15(c)(2). For the reasons set forth above, State Farm has a likelihood of success on the merits of its privilege claims. If Plaintiffs continue using the documents, State Farm faces an imminent threat of irreparable harm because public disclosure cannot be undone, and State Farm will be deprived of a meaningful opportunity to obtain appellate review. Conversely, there is little risk of harm to Plaintiffs. State Farm is not seeking to claw back entire documents without reproducing them. It only seeks to claw back the documents so it can correctly redact portions reflecting substantive attorney advice, and State Farm's attorneys' legal

⁵ While the Court ultimately permitted use of the document at the Wayne Stewart deposition with the understanding that the material would be excised from the record should the Court uphold State Farm's privilege claims, under Oklahoma law, Plaintiffs' counsel should not have attempted to use the document, let alone put the Court in the position of having to make a decision on how it could be used before privilege was decided.

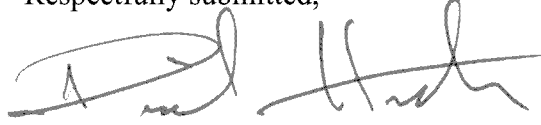
opinions are not admissible at trial. Finally, the risk of harm to the public increases if the Court denies State Farm a stay. In particular, an Order requiring production of these privileged materials and depriving State Farm of an opportunity for meaningful review would impair State Farm's attorney-client privilege and chill the full and frank communications that the Supreme Court recognized are necessary. *Upjohn Co.*, 449 U.S. at 389.

CONCLUSION

The Court should find that HUR00158701-19 contains information and communications protected by the attorney-client privilege and work product doctrine and that, pursuant to 12 O.S. § 2502(E), State Farm's inadvertent disclosure of privileged information and communications in the produced versions of HUR00158702-09 and HUR00158712-19 does not result in a waiver of State Farm's privilege claims. Accordingly, State Farm requests that the Court: (1) uphold the original redactions applied to HUR00158701 and HUR00158710-11; (2) uphold the corrected redactions applied to HUR00158702-09 and HUR00158712-19⁶; (3) strike Plaintiffs' Notice of Supplemental Authority and require Plaintiffs to refile it without references to the privileged information and communications; (4) strike both the portion of Wayne Stewart's September 29, 2026 deposition testimony regarding the privileged and the exhibit itself; and (5) order Plaintiffs and their counsel to return or destroy all copies of the documents produced at HUR00158702-09 and HUR00158712-19. Finally, to the extent the Court finds that any redacted portion of HUR00158701-19 is not privileged, State Farm requests a stay of any such ruling to allow State Farm a meaningful opportunity to consider and seek interlocutory review.

⁶ At the Court's direction, on September 30, 2026, State Farm provided unredacted versions of HUR00158701-19 for *in camera* review (In_Camera_001-19). With this filing, State Farm is also delivering to the Court HUR00158701-19 in unredacted form for *in camera* review which, in open boxes, show State Farm's original redactions outlined in blue and, for HUR00158702-09 and HUR00158712-19, also show State Farm's corrected redactions in yellow highlighting.

Respectfully submitted,



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Attorneys for Defendant
State Farm Fire and Casualty Company

CERTIFICATE OF MAILING

I do hereby certify that on October 5, 2026, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, to those parties as listed below:

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Michael Burrage
Blake Sonne
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Attorneys for Plaintiffs

A handwritten signature in black ink, appearing to read "David R. Herber", written over a horizontal line.

David R. Herber

EXHIBIT 1

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

BILLY and LACY HURSH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2025-2626
	)	
STATE FARM FIRE & CASUALTY	)	
COMPANY; MARK D. WELTY; and MARK D.	)	
WELTY INS. AGENCY, INC.,	)	
	)	
Defendants.	)	

DECLARATION OF SCOTT WELSH

I, Scott Welsh, hereby certify, under penalty of perjury, that the following is true and correct:

1. I am over the age of 21 years, of sound mind, legally capable of making this Declaration, and have personal knowledge of the facts contained in this Declaration.

2. I am employed by State Farm Mutual Automobile Insurance Company (“State Farm Mutual”) as Director of P&C Claims Consulting Services. State Farm Fire & Casualty Company (“State Farm”) is a subsidiary of State Farm Mutual. In October 2021, I served in the same role and was involved in preparing a memorandum titled “P&C Fire Claims Roofs – Quality & Service; October 26, 2021,” for a Senior Executive Offsite meeting (the “SEO Memo”).

3. I have reviewed documents produced in the above-referenced case at Bates numbers HUR00158701-19, which includes an email I sent Gregory E. Jones and Kathy Ress, copying Nicole Manduca and Tom Moss, on October 26, 2021 (HUR00158701), an email thread in which attorneys Tim Marron and Mark Cavanaugh responded to my requests for legal advice and in which I requested legal advice (HUR00158710-11), and two copies of the SEO Memo containing comments reflecting attorney legal advice (HUR00158702-HUR00158709 and HUR00158712-HUR00158719).

4. The SEO Memo addressed State Farm's handling of wind and hail claims. The business personnel involved in preparing the Memo were responsible for its description of State Farm's claim-handling practices and its underlying factual and business content.

5. At the time, State Farm was defending pending litigation challenging aspects of its handling of wind and hail claims, and similar litigation was reasonably anticipated. Against that backdrop, on October 22, 2021, I sent the draft SEO Memo to State Farm attorney Tim Marron and asked the Law Department to review the draft and provide legal advice.

6. I requested legal review because I wanted counsel's advice concerning the legal meaning and implications of language used in the draft. I understood that this required counsel to apply legal judgment informed by the applicable legal standards and the issues raised in pending and reasonably anticipated litigation.

7. I did not ask Marron or Cavanaugh to establish or change State Farm's underlying claim-handling practices or to make business decisions concerning those practices. The business personnel responsible for the SEO Memo remained responsible for its factual and business substance. I asked the attorneys to provide legal advice concerning language in the draft.

8. In response to my requests for legal advice, I received emails (HUR00158710-11) and an annotated draft SEO Memo containing comments from Marron and Cavanaugh (HUR00158712-19). I understood those communications and comments to be the legal advice I had requested. I subsequently asked the attorneys a follow-up question and received additional advice from Cavanaugh (*see* HUR00158710-11).

9. I intended my communications with Marron and Cavanaugh, and the advice they provided in response, to remain confidential within State Farm. I did not intend for those communications or the attorneys' comments to be disclosed outside State Farm or to employees

who were not involved in requesting, receiving, considering, or acting on the legal advice.

10. Later on October 26, 2021, I sent an email concerning the SEO Memo to Gregory Jones and Kathy Ress, copying Nicole Manduca and Tom Moss (HUR00158701-19, including attachments). Each recipient was involved in preparing, reviewing, or approving the SEO Memo and needed to receive or consider the Law Department's advice in performing that responsibility. My email communicated recommendations I had received from the Law Department, and I intended that communication to remain confidential within that group.

11. I implemented the Law Department's legal advice to reinforce and more accurately describe within the SEO Memo claim handling expectations and State Farm standards. The attorney communications concerned counsel's legal review of particular language used in the Memo.

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

October 5, 2026. Cedar City, Utah.

(Date and Place)

Scott Welsh

(Signature)

EXHIBIT 2

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

BILLY & LACY HURSH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2025-2626
	)	
STATE FARM FIRE & CASUALTY COMPANY;	)	
MARK D. WELTY; and MARK D. WELTY	)	
INSURANCE AGENCY, INC.,	)	
	)	
Defendants.	)	

DECLARATION OF MARK CAVANAUGH

I, Mark Cavanaugh, hereby certify, under penalty of perjury, that the following is true and correct:

1. I am over the age of 21 years, of sound mind, legally capable of making this Declaration, and have personal knowledge of the facts contained in this Declaration.

2. I am an attorney admitted to practice law in Illinois and a member of good standing of the Illinois Bar. I am employed as a Vice President - Counsel at State Farm Mutual Automobile Insurance Company ("State Farm Mutual"). In my role, I provide legal advice to subsidiaries of my employer, including State Farm Fire & Casualty Company ("State Farm"), a defendant in the above-referenced case.

3. In making this declaration, I do not intend to—and I am not authorized to—waive any applicable privilege or protection from discovery, including the attorney-client privilege and the work product protection.

4. I have reviewed documents produced in the above-referenced case at Bates numbers HUR00158701-19. The document family consists of four documents, a cover email and three related attachments:

- a. HUR00158701: This document is an email from Scott Welsh to Gregory E. Jones and Kathy Ress, copying Nicole Manduca and Tom Moss, sent October 26, 2021, with the subject line "SEO Fire Claims Service & Quality Update" with the following three attachments.
 - i. HUR00158702-HUR00158709: This document is a draft memorandum titled "P&C Fire Claims Roofs – Quality & Service; October 26, 2021" and was attached to HUR00158701.
 - ii. HUR00158710-HUR00158711: This document is an email thread attached to HUR00158701 from Scott Welsh to himself, dated October 26, 2021 with the subject line "Law Department Feedback." The first-in-time email in the thread is an email from State Farm in-house counsel Tim Marron to Scott Welsh, copying me, dated October 26, 2021, with the subject line "10.26.21 SEO Fire Claims Service & Quality Update." The second-in-time email in the thread is an email from Scott Welsh to Attorney Marron and me. The third-in-time email in the email thread is an email from me to Scott Welsh and Attorney Tim Marron, dated October 26, 2021, with the subject line "10.26.21 SEO Fire Claims Service & Quality Update."
 - iii. HUR00158712-HUR00158719: This document is a draft memorandum titled "P&C Fire Claims Roofs – Quality & Service; October 26, 2021" and was attached to the email Scott Welsh forwarded to himself at HUR00158710.

5. I have an understanding of the chain of events reflected in HUR058701-19, as described below in paragraphs 6 through 13, because I participated in email communications among Scott Welsh, Tim Marron, and myself to provide legal advice regarding the draft memorandum, which are documents included in HUR058701-19, and because Tim Marron and I both reviewed the draft memorandum and provided our legal advice within the memorandum itself as comments in Word comment bubbles, Word track changes, and as in-line comments primarily in brackets. At the time, attorney Tim Marron reported to me. Tim Marron has retired from State Farm Mutual as of on or about December 31, 2025.

6. Scott Welsh is a non-attorney employee of State Farm Mutual. On Friday, October 22, 2021, Welsh sent an email to Attorney Marron asking the Law Department to review and provide attorney comments on a draft document titled “P&C Fire Claims Roofs – Quality & Service; October 26, 2021,” which addresses State Farm’s handling of wind and hail claims (the “Senior Executive Offsite Memo” or “SEO Memo”). In light of litigation then challenging State Farm’s handling of wind and hail claims, I understood Welsh’s request to seek legal advice concerning the legal implications of language used in the draft to describe those practices. Attorney Marron subsequently requested that I assist in that legal review of the draft SEO Memo.

7. At the time Attorney Marron asked me to assist with the legal review of the draft SEO Memo in October 2021, Attorney Marron and I were aware of ongoing and reasonably anticipated litigation against State Farm challenging State Farm’s handling of wind or hail claims. That litigation provided the legal context for our review. Neither Attorney Marron nor I was responsible for establishing the underlying claim handling practices or determining the Memo’s business objectives. Our role was to apply legal judgment to particular language used in the draft.

8. During the period of October 22 to October 26, 2021, both Attorney Marron and I reviewed the draft SEO Memo and provided comments regarding its contents. We evaluated the legal meaning and implications of particular language in the draft based on our legal training, applicable claim handling standards, and the legal issues implicated by pending and reasonably anticipated litigation. The comments covered by State Farm’s original and corrected redactions reflect that legal analysis and advice. They do not establish or direct the underlying claim handling practices. Certain comments also reflect our legal impressions and analysis concerning issues implicated by the pending and reasonably anticipated litigation. Attorney Marron provided his comments to the draft SEO Memo in Microsoft Word comment bubbles, whereas I provided my

comments primarily in Microsoft Word track changes and as in-line comments that I bracketed and put in red.

9. On October 26, 2021 at 10:33 am, Attorney Marron sent an email to Welsh, cc'ing me (HUR00158711) which attached our privileged comments to the draft SEO document (HUR00158712-19). Attorney Marron's cover email itself also contains legal advice to Welsh regarding the draft SEO Memo, as well as attorney impressions, legal theories, opinions, and conclusions. The same day, at 11:24 am, Welsh responded to attorney Marron and me and sought additional legal advice (HUR00158710). Just 15 minutes later, I responded to Welsh by email (with a header PRIVILEGED AND CONFIDENTIAL, ATTORNEY CLIENT COMMUNICATION, AND ATTORNEY WORK PRODUCT), and provided more legal advice and attorney impressions, legal theories, opinions, and conclusions. (*Id.*)

10. Based on my review of HUR00158701-19, I understand that on October 26, 2021 at 5:33 pm, Welsh forwarded to himself my 11:39 am email which, in turn, attached the draft SEO Memo with comments from Attorney Marron and me included in Word comment bubbles, track changes, and in red bracketed text. I have reviewed the document attached to Welsh's 5:33 pm email—HUR00158712-19—and confirmed that both Attorney Marron and I made the comments visible in track changes on pages HUR00158712-19 and Attorney Marron made the comments visible in the comment bubbles. Inline comments on HUR00158712 include legal advice from both Attorney Marron and myself.

11. Based on my review of HUR00158701-19, I understand that it is comprised of an email that Welsh sent to his peers, including Gregory E. Jones and Kathy Ress, October 26, 2021 at 5:43 pm (HUR00158701) which attached: (a) a revised version of the draft SEO memo that Welsh prepared after receiving feedback from Attorney Marron and myself which still included

certain legal advice and work product we provided (HUR00158702-09); and (b) the email that Welsh forwarded to himself at 5:33 pm on 10/26/21 (HUR00158710-11), which attached the draft SEO memo with all the comments from attorney Marron and me in comment bubbles, redline, and in-line text (HUR00158712-19). By comparing the two versions of the draft SEO Memo with the version containing the original comments and tracked changes, I was able to identify the comments that originated with Attorney Marron or me. State Farm's original and corrected redactions are limited to those attorney comments and communications that reveal the legal advice reflected in them. In particular, the revised version of the draft SEO memo that Welsh prepared after receiving feedback from Attorney Marron and myself that he sent at 5:43 pm contains comments that I made which are visible as text and no longer visible as track changes (suggesting Welsh "accepted" the track changes). (E.g., compare bracketed legal comment under "Learn and Adapt" section on HUR158718 which appears as a track change that I entered to same bracketed legal comment on HUR158708 which appears as text.) There is also an instance in the version of the draft SEO memo that Welsh prepared after receiving attorney feedback that he sent at 5:43 pm, specifically at the top of HUR00158707, where the legal advice I had initially provided to Welsh in brackets in track changes (HUR00158717) appears to have been deleted by Welsh but is visible through track changes showing Welsh deleted the comment (HUR00158718). There is also a comment bubble on the first page with a comment from Welsh reflecting Attorney Marron and my legal advice (HUR00158702).

12. Comments that I made, as reflected in HUR00158712-19, appear in the revised version of the draft SEO memo that Welsh prepared HUR00158702-09. These comments include: (1) the bracketed last sentence of the third bullet point from the bottom of page HUR00158703; (2) the bracketed second sentence in the first full paragraph on page HUR00158704; (3) the

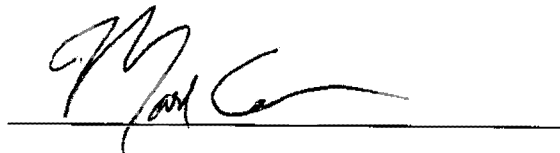
bracketed second sentence under the second heading on page HUR00158704; (4) the bracketed second sentence of the last paragraph on page HUR00158704; (5) the bracketed first full sentence appearing on page HUR00158705; (6) the bracketed material in the last sentence in the second paragraph of page HUR00158705; (7) the bracketed material that appears struck through at the end of the second paragraph on page HUR00158707; and (8) the bracketed material appearing before the third to last paragraph on page HUR00158708.

13. The comments and advice that Attorney Marron and I provided through the draft SEO Memos (HUR00158702-09 and HUR00158712-19) and the accompanying emails (HUR00158710-11) were not intended to be disclosed to third persons other than those to whom disclosure was made in furtherance of the rendition of professional legal services to the client. I never intended to, nor have I, revealed the comments and advice that Attorney Marron and I provided to Welsh regarding the draft SEO Memo to any third-party.

14. The comments and accompanying emails contain Attorney Marron and my core thoughts, legal analysis, opinions, and mental impressions concerning the issues described above. We provided that analysis in response to Welsh's request for legal advice. The comments for which State Farm has asserted work product protections also reflect our analysis of legal issues implicated by pending and reasonably anticipated wind and hail litigation.

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

SIGNED this 5th day of October, 2026 in Bloomington, Illinois.

A handwritten signature in black ink, appearing to read 'Mark Cavanaugh', is written over a horizontal line.

Mark Cavanaugh

EXHIBIT 3

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

BILLY and LACY HURSH,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2025-2626
	)	
STATE FARM FIRE & CASUALTY	)	
COMPANY; MARK D. WELTY; and MARK D.	)	
WELTY INS. AGENCY, INC.,	)	
	)	
Defendants.	)	

DECLARATION OF LAURA SIFF

I, Laura Siff, hereby certify, under penalty of perjury, that the following is true and correct:

1. I am over the age of 21 years, of sound mind, legally capable of making this Declaration, and have personal knowledge of the facts contained in this Declaration.

2. I am employed as a Senior Project Manager at Consilio LLC. Consilio is a legal services and technology provider. I have worked at Consilio in the project management role for over four years and lead a variety of projects, including being the main point of contact for State Farm matters. I have personal knowledge regarding the costs associated with processing State Farm data as well as experience preparing cost estimates for State Farm's various e-discovery projects.

3. I have personal knowledge regarding the costs associated with reviewing State Farm data as well as experience preparing cost estimates for State Farm's various managed review projects. From my work for State Farm, I am familiar with the resources and costs associated with reviewing documents produced in the above-referenced case.

4. In making this declaration, I do not intend to—and am not authorized to—waive any applicable privilege or protection from discovery, including the attorney-client privilege and

the work product protection

5. State Farm engaged Consilio to assist with identifying, processing, reviewing, and producing documents in the above referenced matter (the "Hursh Engagement"). State Farm collected approximately 600,000 documents to review for responsiveness and privilege for this and related matters. To conduct that review, State Farm retained a team of contract attorneys to perform a first-level attorney review of materials for responsiveness and potential privilege. Outside counsel then conducted a second-level attorney review, implemented multiple layers of quality-control review, and made the final decision regarding which documents to produce or withhold. These processes have been followed in these matters.

6. State Farm's production-quality-control measures used in this matter included running targeted searches for key legal personnel, performing audit and consistency checks across matters with similar productions, and performing an additional level of review before logging documents on its privilege log.

7. State Farm has produced over 117,000 documents in this case, in addition to approximately 600,000 documents that State Farm reproduced from prior cases that settled.

8. State Farm's production includes documents marked HUR00158702-09 and HUR00158712-19. Documents produced at HUR00158701-19 in July 2026 were produced at WEST00158701-19 in June 2026 in the *West v. State Farm Fire & Cas. Co.*, No. CJ-2025-135 (Comanche Cty.) with the same privilege claims.

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

SIGNED this 5th day of October, 2026 in Newburyport, Massachusetts.



Laura B. Siff