

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

FILED
DISTRICT COURT
OKLAHOMA COUNTY, OKLAHOMA
October 14, 2026 5:07 PM
RICK WARREN, COURT CLERK
Case Number CJ-2025-2626

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.	)	
	)	

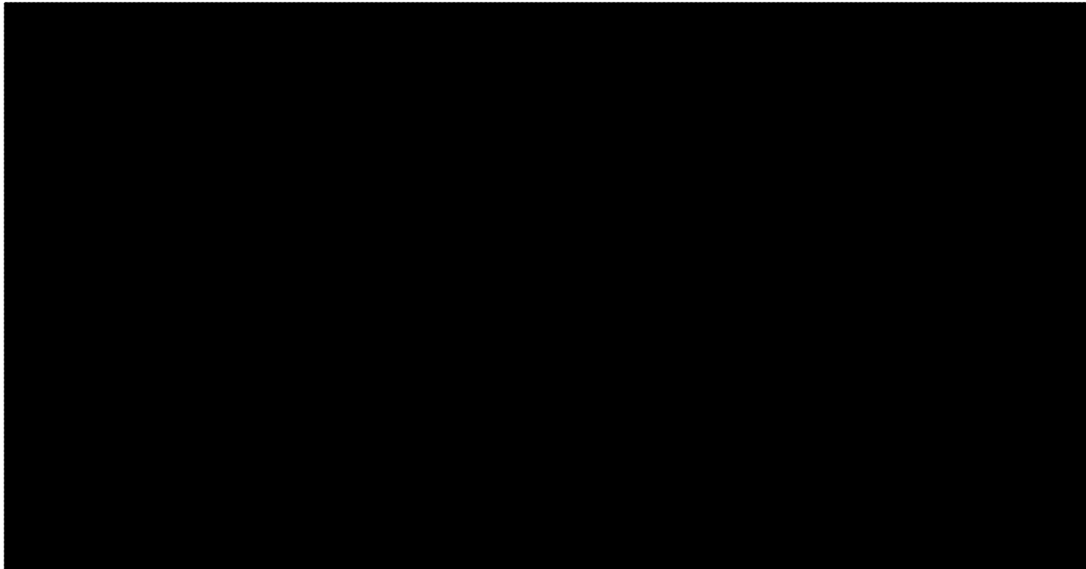
**DEFENDANT STATE FARM FIRE & CASUALTY COMPANY’S MOTION TO
RECONSIDER AND STAY THE COURT’S OCTOBER 1, 2026 MINUTE ORDER**

Defendant State Farm Fire & Casualty Company (“State Farm”) respectfully asks the Court to reconsider and stay the October 1, 2026 Minute Order (the “Minute Order”), which extends the deposition of State Farm’s corporate representative, Nicole Manduca, for an undefined period “beyond 6 hours,” orders “full and flawless compliance with production,” and represents that the Court has been “presented with evidence of white box redactions, no metadata, [and] no privilege log” such that “discovery continues to be an issue.” (See Minute Order at 1, attached as **Exhibit 1** (emphasis in original).) State Farm believes the Court has been provided with an incomplete picture of events, that no good cause supports an undefined extension of Ms. Manduca’s deposition, and that there is no evidence on which the Court could premise such relief—which is disproportionate even to Plaintiffs’ counsel’s stated concern that Ms. Manduca was “evasive” in answering the two questions read to the Court. The directive requiring “full and flawless compliance” with document production imposes a subjective standard inconsistent with settled law. Moreover, the Minute Order’s finding that “discovery continues to be an issue” followed by a list of items is not based on actual “evidence” of “white box redactions,” missing “metadata,” or the absence of a privilege log, but on unproven arguments by Plaintiffs’ counsel. State Farm therefore respectfully requests that the Court reconsider these rulings and stay the Minute Order until this Motion is resolved and State Farm has exhausted its remedies for review by appellate courts.

FACTUAL BACKGROUND

On October 1, 2026, in the courtroom, Plaintiffs deposed Ms. Manduca as State Farm’s corporate representative regarding certain topics related to State Farm’s Fire Model Enhancement efforts. The deposition began at 8:41 a.m. and proceeded smoothly until shortly after 11:00 a.m.

At that time, Plaintiffs' counsel asked Ms. Manduca three questions regarding the following chart from an internal State Farm document marked as Exhibit 15:



(HUR00016350, at HUR00016534, attached as Exhibit 2.)

In particular, counsel asked the following questions regarding this chart, and received the following answers (herein, "Question 1," "Question 2," and "Question 3."):

Q: And, "yes" or "no," would you agree with me that the chart on 16354 shows that

[REDACTED]

A:

[REDACTED]

...

Q: So looking at 16354,

[REDACTED]

A:

[REDACTED]

...

Q: So, “yes” or “no,” is the chart on 16354, which shows [REDACTED]

A: I don’t believe this chart does that.

(Exhibit 3, Oct. 1, 2026 N. Manduca Dep. Tr. 138:13–19; 139:2–10; 139:12–20.)

Neither Question 1, Question 2, or Question 3 asks Ms. Manduca to simply confirm what the chart in Exhibit 15 “says.” Each question goes much further—asking Ms. Manduca to connect the language above the chart (i.e., [REDACTED] to Plaintiffs’ counsel’s assumptions about what the chart depicts (i.e., counsel’s various characterizations of the chart as representing “a reduction in total roof payments” or “total roof decreases”). Furthermore, each question implicitly demands that Ms. Manduca *agree* with counsel’s characterization of the chart as showing “total roof payments” as “decreas[ing]” or “reduc[ing]” over time (*which it does not*). The chart does not show a “reduction in total roof payments”—as stated above the graph, it [REDACTED]

[REDACTED] (See Ex. 2 at HUR00016534.)

The assumptions embedded in Plaintiffs’ counsel’s questions were deliberate. They reflected counsel’s unproven theory that State Farm used [REDACTED] as a euphemism for reducing indemnity payments to policyholders. Each question thus sought to force Ms. Manduca to conflate two distinct concepts and effectively concede that theory. Ms. Manduca properly rejected counsel’s misreading of Exhibit 15, explaining that [REDACTED] —*not* to counsel’s misinterpretation of the chart. She further testified that the chart [REDACTED] not changes in “total roof payments.”

Plaintiffs’ counsel, frustrated with her inability to force Ms. Manduca to agree with Plaintiffs’ incorrect assumptions regarding Exhibit 15, left the courtroom following Ms. Manduca’s answer to Question 3 to obtain “Court guidance.” (See *id.* 139:21–140:1.) Seven minutes later, the Court took the bench and began an impromptu hearing. (See *id.* 140:8–11.) At that hearing, Plaintiffs’ counsel mischaracterized her prior questions as “simply asking [Ms. Manduca] if the chart says what it says in plain English.” (See **Exhibit 4**, Oct. 1, 2026 Hrg. On Responsiveness of Deponent’s Answers (“Manduca Hrg.”) 4:18–19.) Without providing evidence, counsel insisted that “this” was “an issue that has been repeated throughout these depositions, that when we ask a witness ‘yes, or no, does this document say what it says?, we do not get a yes or no answer.” (*Id.* 5:5–9.) State Farm’s counsel requested that the court reporter read back the last question (*i.e.*, Question 3). (See *id.* 6:8–10.) Plaintiffs’ counsel interjected that the reporter should read back “the last two” questions (*i.e.*, Question 2 and Question 3). (See *id.* 6:11–14.) ***But rather than read back the last two questions, the court reporter mistakenly read only Question 1 and Question 2, omitting Question 3.*** (See *id.* 6:17–7:16.)

Following attorney argument, the Court asked Ms. Manduca how many times she had been deposed, and how many times she had testified at trial. (*Id.* 15:1–13.) Ms. Manduca answered that she had testified six times at a deposition, and never at trial. (*Id.*) The Court then stated that “[i]t is the opinion of the Court that this is absolutely evasive behavior. It is a complete frivolous waste of this Court’s time, and it is meant to derail this proceeding, and it’s not going to be allowed.” (*Id.* 15:13–18.) The Court orally ruled that “[t]he witness will answer the question” and that there was “good cause . . . for this deposition to not be limited to six hours.” (*Id.* 15:24–16:4.)

After the hearing on Ms. Manduca’s deposition, the Court convened a second impromptu hearing concerning discovery and media in the courtroom. (See **Exhibit 5**, Oct. 1, 2026 Hrg. On

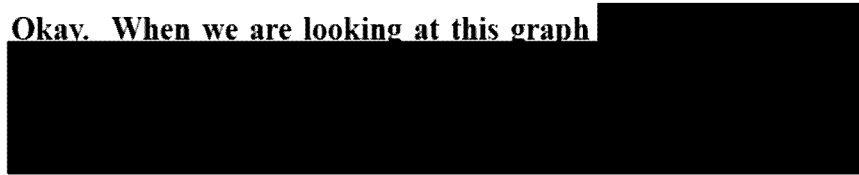
Discovery, Witnesses, and Media (“Disc. & Media Hrg.”) 4:22–5:16.) During that hearing, Plaintiffs’ counsel made numerous unsupported representations about State Farm’s document production. For one, Plaintiffs’ counsel Reggie Whitten asserted that “we have reason to at least suspect that there’s metadata that’s showing what’s behind the curtain,” and that “[State Farm] scrubbed it is what our experts tell us. The metadata has been scrubbed.” (*Id.* 12:18–23; 13:20–21.) Plaintiffs’ counsel Hannah Whitten added, “We are being told that several of these documents have been intentionally scrubbed of metadata” and that, because “[Plaintiffs] specifically asked that all the production must be produced with the metadata . . . that production has not been complete.” (*Id.* 14:13–20.) There was no motion or brief pending on the metadata issue, nor had Plaintiffs’ counsel presented State Farm’s counsel with any evidence regarding these purported issues—or even a specification of which documents were allegedly “scrubbed of metadata.” Plaintiffs’ counsel likewise, without evidence (and without a pending motion), accused State Farm of failing to produce a privilege log and making “white box redactions.” (*See id.* 25:7–15.) In fact, Plaintiffs’ counsel Blake Sonne, plainly to invoke prejudice, incorrectly stated to the Court that “there’s never been a privilege log produced.” (*See id.* 24:11–13.) Following State Farm’s counsel’s correction of that misstatement, Ms. Whitten changed course, arguing that State Farm’s privilege log was “incomplete and deficient” (*id.* 24:14–20.)—again without any evidence.

Thereafter, Ms. Whitten presented to the Court a minute order which Ms. Whitten had written and which stated, *inter alia*, that “The Court has been presented **with evidence of** white box redactions, no metadata, no privilege log, and others.” (*See id.* 27:2–8 (emphasis added).) Ms. Whitten presented the proposed order to the Court without allowing State Farm’s counsel to review it—and even though it contained a misstatement about State Farm producing “no privilege log” that Plaintiffs’ counsel had already retracted. (*See Ex. 1, Minute Order at 1.*)

During the same hearing, the Court acknowledged an absence of knowledge about metadata (*see* Ex. 5, Disc. & Media Hrg. 29:17–22; 23–25)—and accordingly indicated an intent to “defer that metadata issue” for additional briefing. (*See id.* 30:5–12.) Nonetheless, Plaintiffs’ counsel’s Minute Order contained a statement representing that the Court had been “*presented with evidence*” that State Farm had produced “*no metadata*.” (*See* Ex. 1, Minute Order at 1 (emphasis added).) Counsel’s misstatements are not evidence.

Ms. Manduca’s deposition finally resumed at 12:49 p.m.—over an hour and a half after Plaintiffs’ counsel stopped the deposition requesting Court assistance. (*See* Ex. 3, Oct. 1, 2026 N. Manduca Dep. Tr. 140:4–13.) Following that interruption, Plaintiffs’ counsel asked Ms. Manduca only a single question regarding the chart in Exhibit 15:

Q: Okav. When we are looking at this graph



A: No.

(*Id.* 141:3–11.) Plaintiffs’ counsel proceeded to take an hour-long lunch break. (*Id.* 141:12–16.) Thereafter, Plaintiffs’ counsel continued to question Ms. Manduca on other topics until 5:27 p.m., when the Court informed the parties that “it’s time to wrap it up,” and Plaintiffs’ counsel confirmed that she had no more questions for Ms. Manduca. (*See id.* 293:13–294:20.)

LEGAL AUTHORITY

I. THE COURT MAY RECONSIDER ITS INTERLOCUTORY MINUTE ORDER.

A district court has the inherent authority to reconsider or modify an interlocutory, non-appealable order any time prior to entering final judgment. *See Kordis v. Kordis*, 2001 OK 99, ¶ 9, 37 P.3d 866, 870 (citing *Reams v. Tulsa Cable Television, Inc.*, 1979 OK 171, 604 P.2d 373). As the Oklahoma Supreme Court has confirmed, “[a] trial court’s discretion to modify one of its

interlocutory orders anterior to judgment is within the court’s ‘complete control’ and not limited to [specific causes under 12 O.S. § 1031].” *Andrew v. Depani-Sparkes*, 2017 OK 42, ¶ 17, 396 P.3d 210, 218 (quoting *LCR v. Linwood Props.*, 1996 OK 73, 918 P.2d 1388, 1393). “[T]he trial court is not bound by, and may hence reconsider, all of its mid-litigation rulings at any time before the case comes to an end.” *Conterez v. O'Donnell*, 2002 OK 67, 58 P.3d 759, 761–62. In *Snow v. TravelCenters of Am. LLC*, the Court of Civil Appeals of Oklahoma explained:

A district court ruling which lacks finality and appealability is but an *intermediate order* in the case, [and remains] within the trial judge's *complete control* to modify or alter at any time *before judgment*.” A motion to reconsider challenging such an intermediate ruling ‘is to be treated as a request for reconsideration of an intermediate ruling in the case.

2023 OK CIV APP 8, ¶ 10, 527 P.3d 741, 746 (internal citations and quotations omitted).

Similarly, 12 O.S. § 994 provides that an interlocutory order is “subject to revision at any time before the final judgment . . . is filed with the court clerk.” It is “modeled verbatim” after Fed. R. Civ. P. 54(b), which provides an order “may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” *Brandt v. Joseph F. Gordon Architect, Inc.*, 1999 OK 67, ¶ 8, n.1, 998 P.2d 587, 589. Here, the Minute Order does not resolve all claims and is thus an interlocutory order the Court may reconsider or modify.

II. ATTORNEY ARGUMENT IS NOT EVIDENCE.

It is well settled that “attorney arguments are not evidence,” and an attorney cannot meet an evidentiary burden “by asserting that his attorney’s arguments could be replaced . . . by admissible evidence.” *Sousa v. Chipotle Servs., LLC*, 167 F.4th 1286, 1301 (10th Cir. 2026); *see also U.S. v. Kearney*, 150 F.4th 1328, 1338 n.4 (10th Cir. 2025) (rejecting argument that “rel[ie]d heavily” on counsel’s “closing argument” because “attorney arguments are not evidence.”); *Los Angeles Unified Sch. Dist. v. A.O.*, 92 F.4th 1159, 1179 (9th Cir. 2024) (rejecting and not

considering factual assertion from counsel because “[a]ttorney arguments are not evidence” and counsel failed to “point to any place in the record” supporting such assertion).

Indeed, *the Oklahoma Uniform Jury Instructions* for civil cases include the following cautionary instruction to be given to the jury after it is sworn:

The statements, remarks, and arguments of the attorneys are intended to help you in understanding the evidence and applying the law, ***but are not evidence***. If any statement, remark or argument of an attorney has no basis in the evidence, ***then you should disregard it***.

See OUJI – Civil, Instruction No. 1.4 (emphasis added). As such, courts have repeatedly found that allowing a factfinder to rely on attorney argument about unsupported facts is reversible error. See, e.g., *Cler v. Providence Health Sys.-Oregon*, 245 P.3d 642, 645–49 (Or. 2010) (where counsel made statements in closing about how an expert witness would have testified, had she been permitted to testify, “counsel’s introduction during closing argument of facts not in evidence substantially affected [the opposing party’s] rights”); *Macholan v. Wynegar*, 513 N.W.2d 309, 314–15 (Neb. 1994) (reversing and remanding for a new trial where court failed to instruct jury that “arguments or remarks of an attorney are not evidence and that any statement of fact by [an] attorney that is not supported by evidence should be disregarded”).

III. DISCOVERY MUST BE RELEVANT AND PROPORTIONAL.

The Oklahoma Discovery Code, like the Federal Rules of Civil Procedure from which it is derived, requires that all discovery be “proportional to the needs of the case.” 12 O.S. § 3226(B)(1)(a); Fed. R. Civ. P. 26(b)(1). In fact, “the proper scope of discovery is that which is both relevant to the claims or defenses and proportional to the needs of the case; considering the various factors.” *Dodd v. Indian Health Care Res. Ctr. of Tulsa, Inc.*, No. 24-CV-00327-SH, 2024

WL 4648150, at *2 (N.D. Okla. Nov. 1, 2024) (emphasis in original).¹ The Oklahoma Supreme Court recently made clear that a trial court **must** specifically consider the proportionality of discovery before it may compel the production of documents. *See* Order, *Werner Enters., Inc. v. Kirkland*, No. 122,385 (Okla. Sept. 24, 2024) (attached as **Exhibit 6**); *see also* *Chick-fil-A, Inc. v. Ogden et al.*, 2026 OK 13, ¶¶ 15–16 (Mar. 10, 2026) (providing guidance on standards for determining relevance and proportionality, and holding trial court abused its discretion by failing to require plaintiffs “to demonstrate how [requested discovery] would be relevant to a claim or defense in this case”).²

This proportionality requirement applies to **all** discovery—even additional deposition time ordered pursuant to 12 O.S. § 3230(A)(3). While Section 3230(A)(3) provides that “[t]he court may grant an extension of [the deposition] time limits if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice,” *see id.*, such extension remains subject to the overarching proportionality requirement: the Court cannot simply disregard proportionality when determining that additional deposition time is necessary. *See, e.g., Dike v. City of Los Angeles*, No. 2:24-cv-05394-KK-AJR, 2025 WL 3211449,

¹ These factors include: (1) the importance of the issues at stake in the action; (2) the amount in controversy; (3) the parties’ relative access to relevant information; (4) the parties’ resources; (5) the importance of the discovery in resolving the issues; and (6) whether the burden or expense of the proposed discovery outweighs its likely benefit. *See* 12 O.S. § 3226(B)(1)(a).

² The Oklahoma Supreme Court has further cautioned that “pretrial discovery by depositions . . . has a significant potential for abuse.” *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 24 n.41, 944 P.2d 304, 311 n.41. Accordingly, the Discovery Code requires a court to “limit the frequency or extent of discovery otherwise allowed if it determines” that “the proposed discovery is outside the scope permitted by subparagraph a of paragraph 1 of this subsection [regarding relevance and proportionality].” 12 O.S. § 3226(B)(2)(c). Further, this Court may issue, “for good cause shown . . . any order which justice requires to protect a party or person” from “oppression or undue delay, burden or expense,” including “that the discovery not be had” or “that the discovery may be had only on specified terms and conditions.” 12 O.S. § 3226(C)(1).

at *3 (C.D. Cal. July 14, 2025) (“Absent some showing of need or a good reason for doing so, the court will generally not require a deponent to appear for a second deposition” and thus the court must consider whether “the burden [of a second deposition] outweighs the likely benefit”); *see also* Fed. R. Civ. P. 30(d)(1) (a court may allow additional deposition time “consistent with [the relevance and proportionality standards in] Rule 26(b)(1) and (2) if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination”). Indeed, the Code *requires* a court to “limit the frequency or extent of discovery allowed if it determines” that “the proposed discovery is outside the scope permitted by [the relevance and proportionality requirements].” 12 O.S. § 3226(B)(2)(c).

ARGUMENT

State Farm respectfully requests that the Court reconsider the Minute Order as to (1) the undefined extension of Ms. Manduca’s deposition; (2) the unsupported finding that “discovery continues to be an issue” because, contrary to what Plaintiffs’ counsel included in the Minute Order, it is not correct that “the Court [was] presented with evidence of white box redactions, no meta data, [and] no privilege log”; and (3) the unnecessary prefatory statement, inconsistent with settled law, that “[t]his Court ordered full and flawless compliance with production.” The foregoing were not based on evidence before the Court, but on unproven arguments and representations by Plaintiffs’ counsel. Further, an undefined extension of Ms. Manduca’s deposition is not proportional to the needs of this case.

I. THE MINUTE ORDER’S EXTENSION OF MS. MANDUCA’S DEPOSITION IS NOT SUPPORTED BY THE EVIDENCE AND IS ENTIRELY DISPROPORTIONATE.

As an initial matter, the Minute Order’s extension of Ms. Manduca’s deposition is not supported by the evidence. Plaintiffs’ counsel mischaracterized to the Court, out of context, two questions counsel claimed Ms. Manduca answered “evasively,” and the court reporter mistakenly

omitted a third question demonstrating that Ms. Manduca was attempting to answer the questions fairly and honestly. Regardless, there is no good cause for ordering Ms. Manduca to appear for a second deposition that Plaintiffs have not even shown is necessary—and that is certainly not proportional pursuant to *Werner* and Section 3226(B)(2)(C).

A. Plaintiffs’ Counsel Presented Only Attorney Argument—Not Evidence—that Ms. Manduca Was Uncooperative or Obstructive.

Section 3230(A)(3) only permits a court to “grant an extension” to the time limit for depositions “if the court finds that the witness or counsel has been obstructive or uncooperative or if the court finds it to be in the interest of justice.” 12 O.S. § 3230(A)(3). The incomplete evidence presented to the Court did not show that Ms. Manduca was “obstructive or uncooperative,” let alone justify an undefined extension of Ms. Manduca’s deposition. In fact, Ms. Manduca was well prepared for her corporate representative deposition, having spent a total of 75 hours preparing, including meeting with counsel two to three times a week beginning two months before her deposition. (See Ex. 3, Oct. 1, 2026 N. Manduca Dep. Tr. 15:22–16:21.) Counsel pointed to *two* questions (following over two hours of deposition) that Ms. Manduca purportedly answered “evasively.” And yet, a closer review of those questions (and a third omitted by the court reporter) show Ms. Manduca properly rebutted incorrect assumptions counsel inserted in those questions.

Plaintiffs’ counsel incorrectly argued that Ms. Manduca had failed to answer questions “simply asking [Ms. Manduca] if the chart says what it says in plain English.” (Ex. 4, Manduca Hrg. 4:18–19.) But counsel’s questions *did not ask Ms. Manduca to simply confirm what Exhibit 15 says*. Instead, each of the three questions demanded that Ms. Manduca agree with Plaintiffs’ counsel’s *factually incorrect assumptions* that: (1) the chart in Exhibit 15 shows a “reduction in total roof payments” (it does not); (2) the phrase [REDACTED]

[REDACTED] means that State Farm was equating [REDACTED] with

a “reduction total roof replacements” (it does not); and (3) State Farm purportedly uses [REDACTED] as a euphemism for a reduction in indemnity payments (it does not). Thus, neither Question 1, Question 2, or Question 3 ask Ms. Manduca to confirm that the exhibit “says” that [REDACTED] Question 1 asks Ms. Manduca to “agree” with counsel’s interpretation of what the chart “shows”; Question 2 assumes incorrectly that the chart “shows a reduction in total roof payments” and demands that Ms. Manduca agree that such assumption is [REDACTED] and Question 3, which again assumes incorrectly that the chart “shows a reduction of total roof payments,” asks Ms. Manduca to confirm that such assumption is [REDACTED] at State Farm.” (See Ex. 3, Oct. 1, 2026 N. Manduca Dep. Tr. 138:13–19; 139:2–10; 139:12–20.)

Counsel’s questions were improper because they mischaracterized Exhibit 15. The chart does not show a “reduction in total roof payments.” Instead, as the document itself explains, it [REDACTED] [REDACTED] (Ex. 2, at HUR00016534.) [REDACTED] *does not mean that State Farm is paying less to replace roofs.*

Counsel’s unproven insistence that the document “says” otherwise does not render Ms. Manduca’s contrary testimony “obstructive” or “uncooperative.” Ms. Manduca properly answered each question by correcting Plaintiffs’ counsel’s mistaken assumptions about Exhibit 15. In response to Questions 1 and 2, she explained that [REDACTED] [REDACTED] *not* to counsel’s erroneous interpretation that the chart reflected lower indemnity payments. (See Ex. 3, N. Manduca Dep. Tr. 138:13–19; 139:2–10.) In response to Question 3—which the court reporter mistakenly omitted when reading her testimony to the

Court—Ms. Manduca directly rejected counsel’s premise that the chart [REDACTED]

[REDACTED] stating, “I don’t believe this chart does that.” (*Id.* 139:12–20.) Nothing about these responses was “obstructive” or “uncooperative.”³ The Court should reconsider the Minute Order in light of these facts (which were not available to the Court at the October 1 hearing).

B. There Is No Good Cause For Ordering an Additional, Unrestricted Deposition of Ms. Manduca Due to “Evasive” or “Incomplete” Answers.

Even if Ms. Manduca did not answer these three questions (in a day-long deposition) exactly as counsel preferred, that is not good cause for a Minute Order extending Ms. Manduca’s deposition for an undefined time period.

At the hearing, Plaintiffs’ counsel improperly conflated the Court’s ability to extend a deposition under Section 3230(A)(3) with the Court’s ability to grant a motion to compel or award sanctions under a completely different provision, Section 3237(A)(3). Specifically, Mr. Deligans asserted that “witnesses don’t get to provide evasive answers” and that *Section 3237(A)(3)* “is the authority the Court can rely upon to direct this witness to stop being evasive and start being direct.” (*See* Ex. 4, Manduca Hrg. 10:25–12:4.) But Section 3237(A)(3) is a subsection of Section 3237(A), which concerns a “MOTION FOR ORDER COMPELLING DISCOVERY.” *See* 12 O.S. § 3237(A). That section permits a party to “move for *an order compelling an answer*” where “[a] deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title,” and subsection 3237(A)(3) clarifies that “[*for purposes of this subsection*, an evasive or incomplete answer is to be treated as a failure to answer.” 12 O.S. § 3237(A)(3) (emphasis added).

³ Nor are deponents required to restrict their responses to simple one-word answers. *See* 12 O.S. § 3230, Depositions upon Oral Examination (2025) (setting forth no limits on the length or form of deponents’ answers); *see also id.* § 3230(D) (“Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104.”); *see also* 12 O.S. § 2101, et seq. (setting forth no limits on the length or form of deponents’ answers.).

Critically, Section 3237(A)(3) does not give the Court power to indefinitely extend a deposition. Rather, the sole remedy for an “evasive” or “incomplete” answer is for the Court to enter an order “compelling an answer.” 12 O.S. § 3237(A)(3). And while Section 3237(B) provides for sanctions for “FAILURE TO COMPLY WITH ORDER,” and permits “such orders in regard to the failure as are just,” *it does not allow a court to impose sanctions on a party until and unless the party has failed to comply with a court order “compelling an answer.”* See 12 O.S. § 3237(B). This is a critical prerequisite that ensures a party cannot use a disagreement about whether a deposition answer is “evasive” or “incomplete” to punish the opposing party without first (1) meeting and conferring;⁴ (2) obtaining an order from the court compelling an answer to the question(s) at issue; and (3) showing the Court that the party compelled to provide an answer has failed to abide by such court order. See *id.*

This process is also necessary to prevent exactly what has happened here—where Plaintiffs pressured the Court to decide immediately about whether Ms. Manduca was being “evasive” while her deposition was ongoing and without fulsome briefing—or a complete record—on the issue. Due to the court reporter’s unintentional oversight, the Court was not presented with an accurate transcript regarding the questions and answers at issue. As such, the Court was forced to rely on Plaintiffs’ counsel’s mischaracterization of Ms. Manduca’s conduct rather than evaluate Ms. Manduca’s answers in complete context.

⁴ Notably, before filing a motion to compel under Section 3237, a party must first meet-and-confer, and any subsequent motion “must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action.” 12 O.S. § 3237(A)(2). Plaintiffs’ counsel made no effort to confer with State Farm’s counsel regarding Ms. Manduca’s purportedly deficient answers before seeking Court intervention.

This is also why courts have refused to enter sanctions for purported deposition misconduct when a party fails to follow the mandated process. For example, in *R.W. International*, the trial court improperly awarded a dismissal sanction under the equivalent Federal Rule of Civil Procedure 37(b)(2)⁵ against plaintiffs for, *inter alia*, plaintiff's sole shareholder's "refus[al] to answer certain questions that were asked [at his deposition] regarding the tax-exempt status of plaintiff." *R.W. Int'l Corp. v. Welch Foods, Inc.*, 937 F.2d 11, 14 (1st Cir. 1991). The First Circuit reversed, holding that the trial court ***had no authority to impose sanctions under Rule 37(b)(2) where there was no order compelling answers to the questions in dispute***. See *id.* at 14–16. As the First Circuit held, "[t]he rule's language clearly requires two things as conditions precedent to engaging the gears of the rule's sanction machinery: a court order must be in effect, and then must be violated, before the enumerated sanctions can be imposed." *Id.* at 15. In other words, "[t]he taxonomy of Rule 37 is progressive. If an order to answer is issued under Rule 37(a), and then disobeyed, Rule 37(b)(2) comes into play, authorizing the trial court to impose further sanctions." *Id.* In *R.W. International*, because "no Rule 37(a) order to compel answers to [the deposition questions] was extant," defendants' motion for sanctions was premature, and "the district court's premature resort to Rule 37(b)(2) cannot be upheld." *Id.*

Oklahoma law interpreting Section 3237 is in accord. For example, in *Helton v. Coleman*, the Oklahoma Supreme Court addressed a situation in which sanctions were imposed on defendant's counsel "under the discovery code" for purported misconduct during trial. 1991 OK 43, ¶¶ 2, 8. The Supreme Court held that the trial court was "without authority under the discovery

⁵ Because "[t]he Oklahoma Discovery Code mirrors the Federal rules," *Meritor, Inc. v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 2019 OK CIV APP 64, ¶ 20 n.15, 451 P.3d 914, 922 n.15, Oklahoma courts often look to "discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code," *Crest Infiniti II, LP v. Swinton*, 2007 OK 77, ¶ 2, 174 P.3d 996, 999.

code to impose [such sanctions]” because “[t]here is no indication that [plaintiff] first moved for and obtained a court order compelling discovery as is required by the statute.” *Id.* ¶¶ 10, 11.

Section 3230(A)(3) does not allow an extension of the deposition limits whenever a party alleges a witness answered a question “evasively.” If it did, there would be no need for the motion to compel process of Section 3237(A)—a party could simply request a deposition extension under Section 3230(A)(3) whenever they believed an answer given was “evasive” or “incomplete” under Section 3237. But Section 3230(A)(3) requires more: it mandates a Court finding that “the witness or counsel has been *obstructive or uncooperative*.” 12 O.S. § 3230(A)(3) (emphasis added). The Court made no such finding at the hearing—rather, Plaintiffs urged the Court to conflate this finding with the separate standard in Section 3237 and hold that Ms. Manduca had exhibited “evasive behavior.” (*See* Ex. 4, Manduca Hrg. 15:13–18.) As discussed previously, there was nothing at all “evasive” about Ms. Manduca’s answers—but even if there was, the proper remedy was an order compelling Ms. Manduca to answer the specific questions at issue—not an order requiring her to appear for a second deposition.⁶ Plaintiffs’ Minute Order, which improperly conflates the standards and remedies of Section 3230(A)(3) and Section 3237(A), is inconsistent with the Oklahoma Discovery Code and settled law.

C. The Minute Order Does Not Properly Consider Proportionality in Ordering an Unlimited Additional Deposition of Ms. Manduca.

In any event, the Minute Order should be reconsidered because it does not evaluate the proportionality of ordering Ms. Manduca to return for a temporally unlimited additional deposition. The Oklahoma Supreme Court, in *Werner Enterprises*, made clear that a trial court

⁶ Further, any order under Section 3237(A) compelling Ms. Manduca to answer is moot, because immediately following the hearing, Plaintiffs’ counsel asked Ms. Manduca one additional question regarding the chart on Exhibit 15 and was apparently satisfied with the answer. (*See* Ex. 3, Oct. 1, 2026 N. Manduca Dep. Tr. at 141:3–11.)

must specifically consider the proportionality factors set forth in 12 O.S. § 3226(B)(2)(c)—that is, (1) “the importance of the issues at stake in the action”; (2) “the amount in controversy”; (3) “the parties’ relative access to relevant information”; (4) “the parties’ resources”; (5) “the importance of the discovery in resolving the issues”; and (6) “*whether the burden or expense of the proposed discovery outweighs its likely benefit.*” See Ex. 6, Order, *Werner Enters., Inc. v. Kirkland*, No. 122, 385 (Okla. Sept. 24, 2024); 12 O.S. § 3226(B)(1)(a) (emphasis added).

Plaintiffs’ counsel, in urging the Court to adopt the Minute Order, never once mentioned the proportionality of requiring Ms. Manduca to travel back to a second deposition at the courthouse to answer an undefined number of questions. Nor did Plaintiffs’ counsel even argue that such deposition was at all proportionate to the two questions that Ms. Manduca purportedly answered “evasively.” This is directly contrary to the Oklahoma Supreme Court’s guidance in *Werner*, which makes clear that the Court must weigh and assess the proportionality factors in ordering additional discovery. Nor is the undefined extension of Ms. Manduca’s deposition at all proportionate, even if the Court accepts Plaintiffs’ counsel’s argument that Ms. Manduca failed to answer two discrete questions over an entire day of questioning. Plaintiffs have now had—between the depositions of Ms. Manduca and Wayne Stewart—nearly *twelve hours* to depose State Farm’s corporate representatives. Plaintiffs did not and cannot explain why more time is even necessary here—let alone proportional to the needs of this case.

II. THE MINUTE ORDER’S GRATUITOUS STATEMENTS REGARDING STATE FARM’S DISCOVERY EFFORTS ARE NOT SUPPORTED BY ANY EVIDENCE PRESENTED TO THE COURT AND ARE UNNECESSARY.

The Court should also reconsider and excise the unnecessary commentary and incorrect factual findings Plaintiffs’ counsel inserted into the Minute Order. *First*, the Minute Order’s conclusory statement that the Court was “presented with evidence of . . . no metadata” is

improperly premised on hearsay *from Plaintiffs’ counsel* that expert witnesses retained by Plaintiffs purportedly told counsel that certain State Farm documents lack metadata. (See, e.g., Ex. 5, Disc. & Media Hrg. Tr. 12:18–23; *id.* 14:13–20.) Plaintiffs’ counsel themselves declined to commit to such conclusions, relating only that they were “told” it, secondhand, from their “experts.” (See *id.*) Further, the Court readily admitted that, due to the complexity of such technical issues, it would likely need further briefing. (See *id.* 29:17–22; 30:5–12.) There was no motion pending on this issue, nor did Plaintiffs specify any document produced by State Farm with “no metadata.” Plaintiffs’ counsel’s insertion in the Minute Order of that factual finding is thus both erroneous and unnecessary.

Second, the Minute Order’s representation that the Court was “presented with evidence of white box redactions [and] no privilege log” likewise is inappropriately premised on representations—*and a misstatement*—by Plaintiffs’ counsel. Mr. Sonne incorrectly alleged at the hearing that “there’s never been a privilege log produced.” (See *id.* 24:11–13.) Once State Farm’s counsel corrected Plaintiffs’ counsel’s misstatement, Ms. Whitten changed tacks, claiming State Farm’s privilege log was “incomplete and deficient.” (*Id.* 24:14–20.) No evidence was provided in support of Plaintiffs’ counsel’s conclusory assertions, and the Minute Order’s determination that there is “evidence” of “no privilege log” is in fact contradicted by Ms. Whitten’s own claims at the hearing. Plaintiffs’ counsel nonetheless presented a Minute Order to the Court (without allowing State Farm’s counsel to review it) containing this demonstrably false statement. Likewise, Plaintiffs’ counsel mentioned “white box” redactions *once* at the hearing—and did not provide even an explanation of these redactions, let alone that State Farm had used them. There is simply no “evidence”—only attorney argument, supporting these statements and the Minute Order’s inflammatory conclusion that “discovery continues to be an issue.”

Third, the Court should reconsider and strike the commentary in the Minute Order regarding “full and flawless compliance” because it is contrary to law. The Discovery Code does not require “full and flawless” production: it requires a party act in “good faith” both in propounding and responding to discovery requests. *See, e.g.*, 12 O.S. § 3226(F)(5); 12 O.S. § 3226(G)(2). Courts have repeatedly condemned efforts to enforce “perfection” when dealing with complex issues of electronic discovery and production.⁷ As one federal court recently explained, the principle “that courts do not demand perfection in responding to discovery requests, particularly when it comes to the production of electronically stored information,” necessarily follows from the “fundamental limitation” that “all discovery be proportional.” *Adidas America, Inc. v. Thom Browne, Inc.*, 742 F. Supp. 3d 352, 364 (S.D.N.Y. 2024).

State Farm has endeavored to respond to Plaintiffs’ discovery requests in good faith and to comply with this Court’s orders to the best of its ability. Nonetheless, it is impossible—especially when producing hundreds of thousands of documents—to avoid unintentional missteps. If Plaintiffs identify any unintentional oversights in State Farm’s production of documents or metadata, the proper course is for Plaintiffs to first attempt to meet and confer with State Farm and

⁷ *See, e.g., Henderson v. Lockheed Martin Corp.*, No. 6:21-cv-1363-RBD-DCI, 2023 WL 6845234, at *2 (M.D. Fla. Oct. 17, 2023) (denying motion to compel based on allegations that defendant’s document review was faulty, noting that “it is commonly understood that discovery is not perfect” and “in an era where vast amounts of electronic information is available for review, courts cannot and do not expect that any party can meet a standard of perfection”) (quoting *Enslin v. Coca-Cola Co.*, No. 2:14-cv-06476, 2016 WL 7042206, at *3 (E.D. Pa. 2016)); *Agerbrink v. Model Service LLC*, No. 14 Civ 7841 (JPO) (JCF), 2017 WL 933095, at *5 (S.D.N.Y. Mar. 8, 2017) (“The standard for evaluating discovery is reasonableness, not perfection.”); *Reinsdorf v. Skechers U.S.A., Inc.*, 296 F.R.D. 604, 615 (C.D. Cal. 2013) (“[W]hile parties must impose a reasonable construction on discovery requests and conduct a reasonable search when responding to the requests, the Federal Rules do not demand perfection.”); *Federal Housing Fin. Agency v. HSBC N. Am. Holdings Inc.*, Nos. 11 Civ. 6189 (DLC) et al., 2014 WL 584300, at *2 (S.D.N.Y. Feb. 14, 2014) (“[N]o one could or should expect perfection from [the discovery] process. All that can be legitimately expected is a good faith, diligent commitment. . .”).

only after—if any dispute remains—raise the matter with the Court. *See generally* 12 O.S. § 3237. The Minute Order’s insistence on “full and flawless” production threatens to upend these good-faith discovery standards, institute an improper “strict liability” standard, and encourage Plaintiffs to seek unmerited sanctions for every one of State Farm’s alleged missteps.

III. THE COURT SHOULD STAY ITS ORDER PENDING RESOLUTION OF THIS MOTION AND EXHAUSTION OF STATE FARM’S APPELLATE REMEDIES.

State Farm also respectfully requests that the Court stay its Minute Order pending this Motion and exhaustion of State Farm’s remedies for review by appellate courts. The Court may issue, “for good cause shown . . . any order which justice requires to protect a party or person” from “oppression or undue delay, burden, or expense,” including “that the discovery not be had” or “that the discovery may be had only on specified terms and conditions[.]” 12 O.S. § 3226(C)(1). The additional deposition of Ms. Manduca will necessarily disrupt State Farm’s business operations and impose undue time, cost, and burden on State Farm that is disproportionate to this case. Once that burden and expense have been incurred, it cannot be remedied. Other courts, including the Oklahoma Supreme Court, have routinely granted stays in similar circumstances.⁸

CONCLUSION

State Farm respectfully requests the Court grant its motion for reconsideration and vacate its October 1, 2026 Minute Order. State Farm further requests that the Court stay enforcement of the Order—and State Farm’s obligation to produce Ms. Manduca for additional deposition—until this Motion has been resolved and State Farm has exhausted its appellate remedies.

⁸ *See* Order, *State Farm Fire & Cas. Co. v. Hon. Aletia Haynes Timmons*, No. 121,489 (Okla. Aug. 2, 2023) (granting stay of district court’s order to produce documents pending resolution of motion to reconsider); Order, *State Farm Fire & Cas. Co. v. Hon. Amy Palumbo*, No. 123,480 (Okla. Oct. 30, 2025) (staying enforcement of district court’s discovery order pending resolution of petition for writ of prohibition).

Respectfully submitted,



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CERTIFICATE OF MAILING

I do hereby certify that on October 14, 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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A handwritten signature in black ink, appearing to read "David R. Herber", is written over a horizontal line.

David R. Herber

EXHIBIT 1

Attorney(s) for Petitioner

Case No.

Attorney(s) for Respondent

[Handwritten signature]

Judge _____

Ruling By Court:

EXHIBIT 2

Confidential/ Filed Under Seal

EXHIBIT 3

Page 1 1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY STATE OF OKLAHOMA 2 3 BILLY & LACY HURSH, 4 Plaintiffs 5 vs. No. CJ-2025-2626 6 STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and 7 MARK D. WELTY INSURANCE AGENCY, INC., 8 Defendants. 9 10 11 VIDEOTAPED DEPOSITION OF NICOLE MANDUCA 12 Taken on Behalf of the Plaintiffs 13 On October 1, 2026, beginning at 8:41 a.m. 14 In Oklahoma City, Oklahoma 15 16 APPEARANCES: 17 Appearing on behalf of the PLAINTIFFS 18 Hannah Whitten 19 Reggie N. Whitten 20 Blake Sonne 21 Michael Burrage 22 Autumn Hobbs, Legal Assistant 23 WHITTEN BURRAGE 24 512 North Broadway, Suite 300 Oklahoma City, Oklahoma 73102 405-516-7810 hwhitten@whittenburrage.com Rwhitten@whittenburrage.com bsonne@whittenburrage.com mburrage@whittenburrage.com 25 (Appearances continued on next page)	Page 3 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the DEFENDANTS AND THE WITNESS 4 Tiffany Lynne Powers 5 ALSTON & BIRD, LLP 1201 West Peachtree Street NW 6 Atlanta, Georgia 30308 404-881-7000 tiffany.powers@alston.com 7 8 Also present: Walter Haskins (via Zoom) 9 Mark Romano (via Zoom) 10 11 Videographer: Kaleb Pianalto 12 Reported By: Becky Dame Steinkamp, CSR, RPR 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the Plaintiffs 4 R. Ryan Deligans DURBIN, LARIMORE & BIALICK 5 920 North Harvey Oklahoma City, Oklahoma 73102-2610 6 405-235-9584 Rdeligans@dlb.net 7 8 Appearing on behalf of the PLAINTIFFS 9 Joseph E. White, Jr. WHITE & WEDDLE 10 630 N.E. 63rd Street Oklahoma City, Oklahoma 73105 11 405-858-8899 janie@whiteandweddle.com 12 13 Appearing on behalf of the DEFENDANTS AND THE WITNESS 14 Lance E. Leffel 15 GABLEGOTWALS BOK Park Plaza 16 499 W. Sheridan Avenue, Suite 2200 Oklahoma City, Oklahoma 73102 17 405-235-5500 lleffel@gablegotwals.com 18 19 Appearing on behalf of the DEFENDANTS AND THE WITNESS 20 Erica B. Zolner 21 REDGRAVE LLP 230 West Monroe Street, Suite 210 22 Chicago, Illinois 60606 773-720-9169 Ezolner@redgravellp.com 23 24 25 (Appearances continued on next page)	Page 4 1 INDEX 2 Page 3 Direct Examination by Ms. Whitten 9 4 EXHIBITS 5 Exhibit Description Page 6 99 Email Exchange HurProd00062748-2753 59 7 118 Email Exchange Hur00104274-4276 71 8 90 Haag Engineering "Hail Damage Threshold Sizes for Common Roofing 9 Materials" 83 10 100 Email with attached Auto & Fire Model Enhancements - Texas Fire Analysis 11 July 2020 Hur00033512-3513 89 12 105 Email Exchange Hur00145000-5002 106 13 76 Email Exchange with attachment Hur00027781-7783 110 14 16 Email Exchange Hur00003658-3662 118 15 58 Fire Model Enhancement - Water & 16 Wind/Hail PowerPoint Hur00170360 122 17 15 SEO Roofing Claim Update - Wind/Hail Plan Outline and Summary 18 Hur00016350-6356 129 19 5 Instant Message HurProd00037886 146 20 112 Edison Agent Study Group Notes - Oct. 8, 2021, Prepared for Kathy Ress 151 21 133 Email with attached P&C Claims Fire 22 Claims Roofs - Quality & Service October 26, 2021 Hur00158701-8719 157 23 22 Email Exchange Hur00142565-2569 172 24 25 (Exhibits continued on next page)

Page 13 1 far as how many depositions have you been given in 2 the last year regarding the Fire Model Enhancement 3 in an individual capacity, to the best of your 4 recollection? 5 A I believe two other as a personal witness, 6 an individual witness. I believe that's the number. 7 Q And when you say "two others," would you 8 be including the deposition taken in the West matter 9 as a part of those two, or in addition to those two? 10 A And that matter is when we previously met? 11 Q Yes. 12 A It includes that matter. 13 Q Okay. So in total, you've sat for three 14 depositions, and this would be the fourth for State 15 Farm? 16 A There was a supplemental deposition, so I 17 believe -- I believe this would be the fifth. 18 Q Okay. Now, I'd like to get into what you 19 did to prepare for the deposition today, and I 20 understand that counsel for State Farm has provided 21 me a binder, and would it be fair and accurate to 22 say that this binder touches on the documents -- 23 MR. LEFFEL: Put the label the wrong side 24 for you. Sorry. I put your label on the wrong 25 side.	Page 15 1 met with. 2 Q Okay. I appreciate this. This is very 3 helpful. And as far as the amount of time -- and, 4 Ms. Manduca, when I ask you questions today, I am 5 never asking you what conversations you've had with 6 any of your counsel; right? 7 A Of course. 8 Q I'm simply asking about your preparation 9 in terms of what you reviewed and the time frame, 10 but I do not want any conversations that you had 11 with your attorneys. Do you understand that? 12 A I just want to -- can you restate your 13 question? I just want to make sure I'm clear. 14 Q Yes. I had asked you how often you had 15 met with counsel in preparation for today's 16 deposition, and then I was clarifying that in those 17 types of questions, I am not seeking any 18 conversations that you had with your attorney. 19 A Okay. 20 Q Does that make sense? 21 A It does. 22 Q So how often did you meet with counsel in 23 prep -- to prepare for today's deposition? 24 A How often? It would have varied on the 25 week. Approximately, two to three times a week.
Page 14 1 MS. WHITTEN: Oh. No, you're fine. 2 BY MS. WHITTEN: 3 Q Would it be fair and accurate to say this 4 binder -- and feel free to look at your own -- 5 memorializes the documents that you reviewed in 6 preparation for today's deposition? 7 A The documents in the binder are the 8 documents that I requested to have on hand today 9 that I did review in preparation for today. 10 Q Okay. 11 MR. LEFFEL: Ms. Whitten, I apologize. I 12 also used the exhibits from Tuesday's deposition. I 13 didn't spot check to see whether it may have been 14 included in the notebook, too. But some of these 15 documents from -- that you used as exhibits were 16 also discussed. 17 MS. WHITTEN: I appreciate that 18 clarification. 19 BY MS. WHITTEN: 20 Q And is there a document in here that shows 21 who you spoke with to prepare for each topic? 22 A Yes, ma'am. 23 Q Would you flag that for me? 24 A There is this portion in your pocket 25 there, which would reflect the individuals that I	Page 16 1 Q So you met, roughly, two to three times a 2 week -- beginning when? 3 A I believe August. 4 Q Of 2026? 5 A Yes, ma'am. 6 Q And in meeting with counsel since August 7 of 2026, two to three times a week, how many hours, 8 roughly, did you spend preparing for today's 9 deposition? 10 A I just want to clarify. Two to three 11 times a week may not have been each week 12 consecutively since August, so -- and you asked the 13 total amount of time I prepared for today? 14 Q Yes. 15 A I'm -- maybe 75 hours. 16 Q Okay. 17 A Yeah. 18 Q And would that be inclusive of time that 19 you met with Mr. Wayne Stewart to prepare for his 20 deposition? 21 A Yes. 22 Q Okay. It's your understanding that State 23 Farm has designated two corporate representatives in 24 this case; correct? 25 A Correct.

Page 17 1 Q You are one of them serving on some of the 2 topics designated here today, and Mr. Stewart is the 3 other designated corporate representative; correct? 4 A That's correct. 5 Q And when Mr. Stewart was preparing for his 6 deposition, he had met with you to go over some 7 education topics; correct? 8 A That's correct. 9 Q How much time specifically did you spend 10 with Mr. Stewart preparing for today's deposition? 11 A I would say approximately an hour. 12 Q Okay. And, Ms. Manduca, I would like to 13 briefly go over your history at State Farm. I 14 realize that you've testified to some of this 15 before, but what was your first role at State Farm 16 when you joined? 17 A It was an auto claim representative. 18 Q What were the responsibilities of an auto 19 claim representative? 20 A I handled low complexity auto claims, 21 things such as fender benders in parking lots, 22 noninjury-like claims. 23 Q And in working in the auto side at State 24 Farm, did State Farm train you about the differences 25 in duties owed to first parties versus third	Page 19 1 position, and handled various lower complexity 2 homeowners losses, theft, lightning damage, that 3 type of thing. 4 Q How would you define lower complexity? 5 A There would not have been significant 6 structural damage to the property. Claims that -- 7 maybe just not as involved, just, again, as I 8 mentioned, like simple theft, lightning, maybe a 9 simple water leak from a plumbing fixture, that type 10 of thing. 11 Q Okay. And did you manage any employees 12 underneath you as a fire claim representative? 13 A No, ma'am. 14 Q How long did you serve in this role at 15 State Farm? 16 A That was also about 18 months. 17 Q Okay. So 2001 to 2002, roughly? 18 A It was to 2003. 19 Q Okay. And what would be the next role 20 that you served at at State Farm? 21 A I was a catastrophe fire claim 22 representative. 23 Q And would this be the first time that you, 24 in your words, would handle higher complexity claims 25 at State Farm?
Page 18 1 parties? 2 A Yes. 3 Q And it's your understanding that first 4 parties are owed the duty of good faith and fair 5 dealing; right? 6 A Correct. 7 Q And third parties, at least in most states 8 and in Oklahoma, are not owed that duty of good 9 faith and fair dealing; correct? 10 A I believe so. I've not handled much third 11 party. 12 Q Okay. And how long did you -- what year 13 did you join State Farm? 14 A 2000. 15 Q Okay. And how long did you serve as an 16 auto claim representative at State Farm? 17 A Approximately 18 months. 18 Q Okay. So 2000 to 2001? 19 A '01. 20 Q Okay. And what was the next role that you 21 served at State Farm? 22 A I was a fire claim representative. 23 Q And what were your responsibilities as a 24 fire claim representative? 25 A I worked from an in-office, like a virtual	Page 20 1 A That's correct. 2 Q Would you tell me that job title again? 3 Catastrophe fire -- 4 A Claim representative. 5 Q Claim representative. And would you tell 6 me the responsibilities of a catastrophe fire claim 7 representative? 8 A I handled a variety of perils. Wind and 9 hail, wildfire, ice storms, tornadoes, those types 10 of losses. 11 Q Okay. And did you manage any employees 12 serving as a catastrophe fire claim representative? 13 A No. 14 Q And how long did you serve in this role? 15 A I believe 2003 to the end of 2007. 16 Q Okay. And what would be the next job that 17 you served in at State Farm? 18 A I was a catastrophe team manager. 19 Q And is this the first time that you 20 supervised other employees at State Farm? 21 A Yes. 22 Q How large was the team that you 23 supervised? 24 A It would vary. I had a core team that was 25 approximately six to eight team members. And when I

Page 137 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 139 1 have six hours to ask you. 2 So looking at 16354, [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 MR. LEFFEL: Objection. Form. 7 You can go ahead. 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 BY MS. WHITTEN: 12 Q Ms. Manduca, I'm objecting again, and I do 13 not want to have to grab the judge, but I will. 14 So, "yes" or "no," is the chart on 16354, 15 which shows [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 MR. LEFFEL: Objection. Form. 19 [REDACTED] 20 [REDACTED] 21 MS. WHITTEN: That is not a "yes" or "no." 22 And I think, at this point, I'm going to have to get 23 the Court. I'm entitled to ask "yes" or "no" 24 questions. It's been happening all morning, and 25 I've made several objections to responsiveness. I
1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 Q And, "yes" or "no," would you agree with 14 me that the chart on 16354 shows that [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 Q Ms. Manduca, I'm going to object to 21 responsiveness. This is a "yes" or "no" question. 22 Your counsel will redirect you at the end of this 23 deposition, and he can ask you whatever he wants to, 24 and you'll have plenty of time to elaborate on that, 25 but, right now, this is my deposition, and I only	Page 140 1 think we're going to have Court guidance. 2 Will you keep the camera on? I do not 3 want to go off record. 4 (Whereupon, the record remained open while 5 Ms. Whitten left the courtroom at 11:11 a.m.) 6 MS. WHITTEN: The judge will be coming out 7 shortly. 8 (Whereupon, Judge Palumbo took the bench 9 and a hearing was conducted beginning at 11:18 a.m. 10 See transcript of hearing before Judge Palumbo 11 produced under separate cover.) 12 THE VIDEOGRAPHER: Back on the record at 13 12:49 p.m. 14 BY MS. WHITTEN: 15 Q Ms. Manduca, I realize that you just sat 16 through an impromptu hearing, and I had a pending 17 question. I was objecting to responsiveness. The 18 Court has signed an order stating that the Court 19 expects witnesses to appear live, and this Court 20 orders that Ms. Nicole Manduca must testify as a 21 corporate representative in a non-evasive manner, 22 and the depo may extend beyond the six hours, as 23 needed. 24 So with that understanding, looking back 25 at Exhibit 15 -- and let me know whenever 16354 is

Page 141 1 up. 2 A I'm ready. 3 Q Okay. When we are looking at this graph 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 A No. 10 MS. WHITTEN: And, with that, I'm happy to 11 take my break. 12 THE VIDEOGRAPHER: Off the record at 13 12:50 p.m. 14 (Lunch recess) 15 THE VIDEOGRAPHER: Back on the record at 16 1:50 p.m. 17 MS. WHITTEN: Ms. Manduca, we're back on 18 the record. I do briefly want to have a matter of 19 housekeeping. 20 The Court has alerted us that we need to 21 be out of here by 6:00, and considering the amount 22 of stuff we have, we're going to stop it at 5:30. 23 Pursuant to Court order, this deposition 24 is not limited to six hours, and the Court has 25 offered her courtroom tomorrow to continue the	Page 143 1 good faith planning. 2 MR. LEFFEL: I'll just point out we 3 haven't finished what we're doing right now, and, 4 you know, you may or may not have more questions. 5 You may get done, so we don't know yet. 6 MS. WHITTEN: Yeah. Mr. Leffel, I'm 7 telling you that I'm going to take advantage of the 8 court order that's telling me I get additional time, 9 period, pursuant to the evasive answers of 10 Ms. Manduca. That's why I'm making a record here 11 today. 12 MR. LEFFEL: We respectfully disagree that 13 her answers are evasive. 14 MR. WHITTEN: Let me address this. You 15 did tell me about your vacation. I forgot you were 16 leaving tomorrow, so we're not going to do it 17 tomorrow. 18 And on your comment about her -- the 19 deposition being scheduled for yesterday, that -- 20 that may be true in State Farm's mind, but it's well 21 documented between Blake Sonne and Timila that we 22 did not agree to that. And I'm not getting into 23 that. I know you're not in that case, but we did 24 not agree to that, and the reasons are all set forth 25 in Blake's numerous emails, so that part, I take
Page 142 1 deposition if that is an option. 2 So I would like to discuss when we may 3 reset the rest of the remaining deposition of Ms. 4 Manduca as a corporate representative, considering 5 that we have trial set for December 7th. 6 MR. LEFFEL: Number one, I'm happy to have 7 the discussion. We don't know whether we're going 8 to need additional time. We've not completed our 9 deposition testimony today. As everyone on your 10 side of the table I think is well aware that I have 11 been transparent for months that I am leaving the 12 country tomorrow. I've got a flight mid-morning 13 tomorrow, and I have a witness who has flown in and 14 was prepared to be here for her deposition yesterday 15 that was scheduled and for today. She is not 16 available due to a board commitment that she has 17 tomorrow. So tomorrow is not an option for counsel 18 or the witness. 19 MS. WHITTEN: I understand that, but 20 pursuant to Court order, this deposition is not 21 limited to six hours, so I dispute the fact that 22 additional time is not needed. It absolutely is, 23 and that's what I'm making a record of right now. 24 But we will continue to reopen this deposition once 25 it is closed today. So I would like to see some	Page 144 1 issue with. 2 But go on your vacation. That's fine. 3 And we'll reset this. 4 MS. WHITTEN: We need a date certain to 5 reset it because of December 7th. 6 MR. WHITTEN: We don't have to pick it 7 this second, but we do need a date. 8 MR. LEFFEL: I would like to finish 9 conducting the deposition, and we'll deal with that 10 as soon as we can. 11 MR. WHITTEN: That's fair. But give us a 12 date when you can so that we can reset it. 13 MS. WHITTEN: And I would ask for a date 14 no later than next Friday to reset this, considering 15 the trial is fast approaching. 16 BY MS. WHITTEN: 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 Q Okay. And, specifically, I am referring 21 to Exhibit 58 -- 22 A Okay. 23 Q -- which I passed out previously. 24 A Yes. I have that here. 25 Q Give me a second to grab 58. Here it is.

1 BY MS. WHITTEN: 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 THE COURT: Gang, it's time to wrap it up. 14 MS. WHITTEN: Yes, Your Honor. 15 (Off the record) 16 THE VIDEOGRAPHER: Back on the record at 17 5:27 a.m. 18 BY MS. WHITTEN: 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 293 1 JURAT 2 HURSH VS STATE FARM, ET AL. 3 I, NICOLE MANDUCA, do hereby state under 4 oath that I have read the above and foregoing 5 deposition in its entirety and that the same is a 6 full, true and correct transcription of my testimony 7 so given at said time and place. 8 9 10 11 Signature of Witness 12 13 14 Subscribed and sworn to before me, the 15 undersigned Notary Public in and for the State of 16 Oklahoma by said witness, NICOLE MANDUCA, on this 17 _____ day of _____, 2026. 18 19 20 21 22 NOTARY PUBLIC 23 MY COMMISSION EXPIRES: _____ 24 (BD) JOB #183405 25
Page 294 1 [REDACTED] 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 Q Do you know if State Farm has produced all 8 the reinspection reports in this case? 9 A I do not know. 10 Q Okay. And are you aware that State Farm 11 had a previous corporate representative testify that 12 State Farm was not overpaying on wind and hail 13 claims? 14 MR. LEFFEL: Objection. Form. 15 Go ahead. 16 THE WITNESS: I'm not aware. 17 MS. WHITTEN: That's all the questions I 18 have with the note that I reserve my order -- minute 19 ordered from today to have additional time, and I do 20 note that she was not properly educated, so... 21 MR. LEFFEL: We respectfully disagree and 22 reserve our questions. 23 THE VIDEOGRAPHER: Off the record at 5:28. 24 25	Page 296 1 ERRATA SHEET 2 HURSH VS STATE FARM, ET AL. 3 DEPOSITION OF NICOLE MANDUCA 4 REPORTED BY: Becky Dame Steinkamp, CSR, RPR 5 DATE DEPOSITION TAKEN: October 1, 2026 6 JOB NO. 183405 7 PAGE LINE IS SHOULD BE 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

EXHIBIT 4

Page 1 1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY STATE OF OKLAHOMA 2 3 BILLY & LACY HURSH, 4 Plaintiffs 5 vs. No. CJ-2025-2626 6 STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and 7 MARK D. WELTY INSURANCE AGENCY, INC., 8 Defendants. 9 10 11 HEARING ON RESPONSIVENESS OF DEPONENT'S ANSWERS TO PLAINTIFF COUNSEL'S QUESTIONS BEFORE HONORABLE JUDGE AMY PALUMBO On October 1, 2026, beginning at 11:18 a.m. In Oklahoma City, Oklahoma 12 13 14 15 APPEARANCES: 16 Appearing on behalf of the PLAINTIFFS 17 Hannah Whitten 18 Reggie N. Whitten 19 Blake Sonne 20 Michael Burrage 21 Autumn Hobbs, Legal Assistant 22 WHITTEN BURRAGE 23 512 North Broadway, Suite 300 Oklahoma City, Oklahoma 73102 405-516-7810 hwhitten@whittenburrage.com Rwhitten@whittenburrage.com bsonne@whittenburrage.com mburrage@whittenburrage.com 24 25 (Appearances continued on next page)	Page 3 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the DEFENDANTS AND THE WITNESS 4 Tiffany Lynne Powers 5 ALSTON & BIRD, LLP 1201 West Peachtree Street NW 6 Atlanta, Georgia 30308 404-881-7000 tiffany.powers@alston.com 7 8 Also present: Walter Haskins (via Zoom) 9 Mark Romano (via Zoom) 10 11 Videographer: Kaleb Pianalto 12 Reported By: Becky Dame Steinkamp, CSR, RPR 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the Plaintiffs 4 R. Ryan Deligans 5 DURBIN, LARIMORE & BIALICK 920 North Harvey 6 Oklahoma City, Oklahoma 73102-2610 405-235-9584 Rdeligans@dlb.net 7 8 Appearing on behalf of the PLAINTIFFS 9 Joseph E. White, Jr. 10 WHITE & WEDDLE 630 N.E. 63rd Street 11 Oklahoma City, Oklahoma 73105 405-858-8899 janie@whiteandweddle.com 12 13 Appearing on behalf of the DEFENDANTS AND THE WITNESS 14 Lance E. Leffel 15 GABLEGOTWALS BOK Park Plaza 16 499 W. Sheridan Avenue, Suite 2200 Oklahoma City, Oklahoma 73102 17 405-235-5500 lleffel@gablegotwals.com 18 19 Appearing on behalf of the DEFENDANTS AND THE WITNESS 20 Erica B. Zolner 21 REDGRAVE LLP 230 West Monroe Street, Suite 210 22 Chicago, Illinois 60606 773-720-9169 Ezolner@redgravellp.com 23 24 25 (Appearances continued on next page)	Page 4 1 PROCEEDINGS 2 THE COURT: Thank you, folks. Please be 3 seated. 4 All right, guys. What can I do for you? 5 MS. WHITTEN: Hi, Your Honor. 6 THE COURT: Hello. 7 MS. WHITTEN: I hate to bother you, but I 8 just want to give you an example of one of the 9 issues we're facing here today, Your Honor. This is 10 Exhibit 15, and I'm reading from the page that is 11 shown in front of you. There's a second chart on 12 this page that [REDACTED] 13 [REDACTED], and I asked the witness, 14 "Does this State Farm chart, [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] I'm simply asking her if 19 this chart says what it says in plain English, "yes" 20 or "no," and I cannot get a "yes" or "no." I've 21 objected to responsiveness several times. 22 I told the witness that her attorney is 23 entitled to cross her -- or redirect her, which is 24 exactly what happened Tuesday, and ask for an 25 explanation of her answer, but I'm entitled to ask a

Page 5 1 corporate representative "yes" or "no," does this 2 document say what it says, and all I'm getting are 3 explanations and long answers that are not a "yes" 4 or "no." 5 So I'm looking for guidance because this 6 has been an issue that has been repeated throughout 7 these depositions, that when we ask a witness, 8 "'Yes' or 'no,' does this document say what it 9 says?" we do not get a "yes" or "no" answer. And 10 they're coached to repeat back and forth '[REDACTED] 11 [REDACTED] 12 [REDACTED] 13 And so I'm hoping the Court can provide us 14 guidance on our ability to ask a corporate 15 representative a "yes" or "no" question and get a 16 "yes" or "no" answer. 17 THE COURT: Okay. And just for clarity, 18 we've got a corporate representative deposition 19 taking place here today? 20 MS. WHITTEN: Yes, Your Honor. 21 THE COURT: And we did on Tuesday, as 22 well? 23 MS. WHITTEN: Yes, Your Honor. 24 THE COURT: Okay. And the corporate 25 representative today is who?	Page 7 1 Q Ms. Manduca, I'm going to object to 2 responsiveness. This is a "yes" or "no" question. 3 Your counsel will redirect you at the end of this 4 deposition, and he can ask you whatever he wants to, 5 and you'll have plenty of time to elaborate on that, 6 but right now, this is my deposition, and I only 7 have six hours to ask you. 8 So looking at 16354, [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 MR. LEFFEL: Objection. 13 THE WITNESS: [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 (End of readback) 17 MR. LEFFEL: With that, Your Honor, I 18 would direct the Court to some authorities on this 19 issue, which is part of why we asked for a protocol 20 in these cases. 21 I cite to the Court State Farm Mutual Auto 22 versus Daughtry. It is a Northern District of 23 Oklahoma case from 2006. And that Court advocates 24 -- the Court specifically said -- the Court 25 emphasized that "There is no rule requiring a
Page 6 1 MS. WHITTEN: Nicole Manduca. She is 2 designated for all the Fire Model Enhancement 3 topics. [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 THE COURT: Thank you. 7 Your response, sir? 8 MR. LEFFEL: I do. May I start by asking 9 Ms. Dame to repeat the last question and answer from 10 the record? 11 MS. WHITTEN: Would you actually read the 12 last two? Because I objected to responsiveness 13 twice, so the Court can hear the trouble we're 14 having about getting these answers. 15 Sorry, Becky. I know this is a court 16 reporter's nightmare. 17 (Whereupon, reporter read back the 18 previous two questions and answers, as follow:) 19 Q And "yes" or "no," would you agree with 20 me, that the chart on 16354 shows that [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]	Page 8 1 deponent to restrict answers to one-word responses 2 and that deposing counsel cannot misrepresent the 3 rules to force a particular answer to form." 4 I would also cite to the Court Alexander 5 versus FBI, a 1998 case out of the District of DC, 6 where the key holding was that a witness cannot be 7 compelled to submit a different answer to a question 8 simply because plaintiffs were hoping to receive a 9 different answer or unable or unwilling to find an 10 answer to the question elsewhere in the deposition. 11 MR. WHITE: I want to say one thing here, 12 Judge. 13 THE COURT: Yes, sir. 14 MR. WHITE: Part of the purpose of 15 discovery in doing these depositions is trying to 16 streamline the presentation of evidence to a jury, 17 and you -- you are allowed as an advocate to ask 18 State Farm, this corporate representative, a "yes" 19 or "no" question as to documents that they produced, 20 so we know that they will agree, and we get to tell 21 the jury "State Farm will tell you this." 22 You can't do that with these -- with these 23 answers that she's getting. This -- this kind of is 24 a culmination of this morning where Ms. Whitten has 25 to "I respectfully object to your response. It's a

Page 9 1 'yes' or 'no' question." 2 And this is be exactly what we've been 3 listening to through the morning when this witness 4 is asked a very appropriate structured "yes" or "no" 5 question that will allow us to be able to frame 6 issues for the jury in a manner that we know we can 7 hold them accountable for because we have the "yes" 8 or "no" answer, and they're refusing to do that. 9 And I believe under the Discovery Code, 10 she is asking a very appropriate and proper 11 question, and they're being combative, with all due 12 respect to my colleague -- the witness -- not my 13 colleague, but the witness is being combative on 14 answering the question appropriately, and we're 15 asking for the Court's help, the Court's guidance, 16 that they should be directed to answer the question 17 "yes" or "no." It's a -- 18 MR. LEFFEL: Your Honor -- 19 MR. WHITE: -- straightforward question. 20 MR. LEFFEL: Sorry about that, Joe. 21 Yeah, I mean, they tell you of no 22 authority that says that a witness is not allowed to 23 use their own words to provide context to their 24 answers, and I have cited specific authority to this 25 Court that says that it's inappropriate to say, "You	Page 11 1 Oklahoma Discovery Code, specifically 3237A.3., is 2 that witnesses don't get to provide evasive answers. 3 And I think that Ms. Becky read you back an evasive 4 answer, and that's what Ms. Whitten is asking this 5 Court for, is to stop the evasiveness. 6 She can rattle on all kinds of stuff, but 7 she doesn't get to do that in a witness chair in 8 front of our jury. And the Courts needs -- I feel 9 like the request is the Court describe guidance that 10 you don't get to be evasive here, just like you're 11 not going to be evasive in front of the jury. We 12 get to hold you accountable for yeses and nos and to 13 provide a complete answer if that is what they 14 believe she needs to do. That's the purpose of 15 redirect. 16 Ms. Whitten had to ask three times. And 17 what does that do? That cuts into our time. 18 Because we're trying to comply with the Oklahoma 19 Discovery Code. And every time she has to rerepeat 20 a question because of an evasive answer, it only 21 cuts into time. It frustrates the discovery 22 process, and that should not be tolerated by this 23 Court or any Court. 24 And so, with all due respect to my friend, 25 Lance and counsel, 3237A.3. does not permit these
Page 10 1 have to answer this question with one word." 2 I mean, we saw this in the last deposition 3 of Ms. Manduca in West where it was suggested that, 4 you know, counsel was giving her the answer. Just 5 repeat my answer back to you. That's not the 6 purpose of a deposition. She's allowed to provide 7 context. The authority says that it is 8 inappropriate to tell a witness that they have to 9 use one-word answers. 10 She's trying to answer the question to the 11 best of her ability. There's been numerous 12 instances today when the question was merely, "Is 13 that what the document says?" where she says, "Yes, 14 I see where that's -- where that's written there." 15 I think that this question was framed a 16 little differently, and she's providing her context 17 and her understanding of the document which is what 18 she's supposed to do as a corporate representative. 19 MR. DELIGANS: May I address counsel's 20 statement on not providing you authority? 21 THE COURT: Sure. 22 MR. DELIGANS: Again, I don't have a tie 23 on today. I want to apologize for not having a tie. 24 THE COURT: That's fine. 25 MR. DELIGANS: But the spirit behind the	Page 12 1 evasive answers. And I would suggest that that is 2 the authority this Court can rely upon to direct 3 this witness to stop being evasive and start being 4 direct. Direct questions, direct answers that are 5 true. That's all we're asking for. 6 MR. LEFFEL: I didn't hear it -- 7 MS. WHITTEN: Your Honor -- 8 MR. LEFFEL: I'm sorry. 9 MS. WHITTEN: -- Mr. Leffel is aware of 10 the law that Mr. Deligans relies on because, when we 11 produce our plaintiffs in depositions, we get asked 12 "yes" or "no" questions, and they object to 13 responsiveness. Where is the law that they're now 14 relying on that the witness doesn't have to answer a 15 "yes" or "no" questions? We've engaged in countless 16 depositions of our plaintiffs, and it is ridiculous 17 for State Farm to take the position here today that 18 a lawyer is not entitled to ask a "yes" or "no" 19 question and get a "yes" or "no" answer. 20 MR. LEFFEL: I didn't hear it, Your Honor, 21 that segment that was read, but what I remember 22 Ms. Manduca saying was, "I don't agree that that's 23 what the document says." I mean, that is a way of 24 saying "yes" or "no" in her own words. 25 And, again, the case law says you can't

Page 13 1 tell the witness that you can only answer -- you can 2 only give a one-word answer. I mean, you're allowed 3 to provide context. And the remedy is to ask a 4 follow-up question, ask your question in a different 5 way. 6 MR. DELIGANS: But, actually, Judge, the 7 Discovery Code says the remedy is that it's treated 8 as a failure to answer. It's a failure to answer 9 because my friend Blake said I was right on the law. 10 It's a failure to answer. And we would like 11 instructions to our jury and admonishment to the 12 witness and instruction to the jury that anything 13 that her failing to answer is deemed to be 14 against -- just like if you failed to answer a 15 Request for Admission, it's deemed admitted. 16 And, Judge, I just think today -- I'm not 17 trying to get emotional, but I think it would help 18 if you provided this witness and this team over here 19 guidance of what you expect answers to be, and that 20 we have complied with the Discovery Code. And that 21 section specifically says, "an evasive or incomplete 22 answer is to be treated as a failure to answer." 23 Did I read that right, Blake? 24 MR. SONNE: You did. 25 MR. DELIGANS: Okay. Sorry. That's for	Page 15 1 THE COURT: Okay. How many times -- just 2 so that I have an idea of what exactly the breadth 3 and the depth it is that I'm dealing with here, how 4 many times has your witness been deposed in her 5 life? Dozens? Hundreds? 6 MR. LEFFEL: You can answer. I can't 7 answer for you. 8 THE COURT: Have you lost count? 9 THE WITNESS: Six times. 10 THE COURT: Six times. How many times 11 have you testified in trial? 12 THE WITNESS: Never. 13 THE COURT: All right. 14 It is the opinion of this Court that this 15 is absolutely evasive behavior. It is a complete 16 frivolous waste of this Court's time, and it is 17 meant to derail this proceeding, and it's not going 18 to be allowed. 19 Your objection is going to be sustained. 20 The witness will answer the question. The whole 21 purpose of the ability of your counsel to follow up 22 and flush out whatever you would like, I'm not going 23 to curtail that. 24 It appears that, while things have been 25 real quiet on the other side of this wall, things
Page 14 1 the record. 2 THE COURT: Anything further? 3 MR. LEFFEL: No, Your Honor. 4 THE COURT: Okay. I just have a couple 5 questions. 6 So, again, who all -- I've got lawyers in 7 my courtroom who I don't know. I've got folks in my 8 courtroom who I do not recognize. So who all do I 9 have here? I've got three State Farm lawyers? 10 Lance, you, and you two ladies? 11 MS. ZOLNER: That's right. 12 MR. LEFFEL: Ms. Zolner and Ms. Powers. 13 MS. POWERS: Yes, Your Honor. 14 THE COURT: Okay. And then -- 15 THE VIDEOGRAPHER: I'm just the 16 videographer. 17 THE COURT: You're the tech guy. Okay. 18 I'm just curious. Just for a little bit 19 of background knowledge, do we consider this witness 20 a professional witness? 21 MR. LEFFEL: I don't know what that means. 22 I mean, she's an employee of State Farm who's been 23 designated as a corporate representative. 24 MS. WHITTEN: And she's been a previous 25 corporate representative for State Farm.	Page 16 1 have perhaps not gone as well as I had hoped. So to 2 that effect, the Court's opinion is that there is 3 definitely good cause shown for grounds for this 4 deposition to not be limited to six hours. And I'm 5 not excited about having any extra time take place 6 in some other state. So that's -- my position has 7 been very clear. Just because something is 8 discoverable does not necessarily mean it's going to 9 be admissible. 10 And I have been doing a lot of thinking 11 about preparation for this trial, and we're actually 12 going to make a totally separate record on that, and 13 I'd like to do that right now, so let's shift gears. 14 (HEARING CONCLUDED AT 11:32 A.M.) 15 16 17 18 19 20 21 22 23 24 25

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CERTIFICATE

3 STATE OF OKLAHOMA)

) SS:

4 COUNTY OF OKLAHOMA)

5

I, Becky Dame Steinkamp, Certified

6

Shorthand Reporter within and for the State of

7

Oklahoma, do hereby certify that the above and

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foregoing hearing was by me taken in shorthand and

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thereafter transcribed; that I am not an attorney

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for nor relative of any of said parties or otherwise

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interested in the event of said action.

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IN WITNESS WHEREOF, I have hereunto set my

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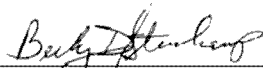
hand and official seal this 7th day of October,

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2026.

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Becky Dame Steinkamp, CSR, RPR

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EXHIBIT 5

Page 1 1 IN THE DISTRICT COURT OF OKLAHOMA COUNTY STATE OF OKLAHOMA 2 3 BILLY & LACY HURSH, 4 Plaintiffs 5 vs. No. CJ-2025-2626 6 STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and 7 MARK D. WELTY INSURANCE AGENCY, INC., 8 Defendants. 9 10 PRETRIAL RECORD 11 REGARDING DISCOVERY, WITNESSES, AND MEDIA BY HONORABLE JUDGE AMY PALUMBO 12 On October 1, 2026, beginning at 11:32 a.m. In Oklahoma City, Oklahoma 13 14 15 APPEARANCES: 16 Appearing on behalf of the PLAINTIFFS 17 Hannah Whitten 18 Reggie N. Whitten 19 Blake Sonne Michael Burrage Autumn Hobbs, Legal Assistant WHITTEN BURRAGE 20 512 North Broadway, Suite 300 Oklahoma City, Oklahoma 73102 21 405-516-7810 hwhitten@whittenburrage.com 22 Rwhitten@whittenburrage.com bsonne@whittenburrage.com 23 mburrage@whittenburrage.com 24 25 (Appearances continued on next page)	Page 3 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the DEFENDANTS AND THE WITNESS 4 Tiffany Lynne Powers ALSTON & BIRD, LLP 1201 West Peachtree Street NW Atlanta, Georgia 30308 404-881-7000 tiffany.powers@alston.com 5 6 7 8 Also present: Walter Haskins (via Zoom) 9 Mark Romano (via Zoom) 10 11 Videographer: Kaleb Pianalto 12 Reported By: Becky Dame Steinkamp, CSR, RPR 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2 1 CONTINUED APPEARANCES: 2 3 Appearing on behalf of the Plaintiffs 4 R. Ryan Deligans DURBIN, LARIMORE & BIALICK 5 920 North Harvey Oklahoma City, Oklahoma 73102-2610 6 405-235-9584 Rdeligans@dlb.net 7 8 Appearing on behalf of the PLAINTIFFS 9 Joseph E. White, Jr. WHITE & WEDDLE 10 630 N.E. 63rd Street Oklahoma City, Oklahoma 73105 11 405-858-8899 janie@whiteandweddle.com 12 13 Appearing on behalf of the DEFENDANTS AND THE WITNESS 14 Lance E. Leffel GABLEGOTWALS BOK Park Plaza 16 499 W. Sheridan Avenue, Suite 2200 Oklahoma City, Oklahoma 73102 405-235-5500 llefel@gablegotwals.com 17 18 19 Appearing on behalf of the DEFENDANTS AND THE WITNESS 20 Erica B. Zolner REDGRAVE LLP 230 West Monroe Street, Suite 210 Chicago, Illinois 60606 773-720-9169 Ezolner@redgravellp.com 21 22 23 24 25 (Appearances continued on next page)	Page 4 1 PROCEEDINGS 2 THE COURT: Good afternoon. We are 3 present on the record in Case Number CJ-25-2626, 4 Hursh versus State Farm, et al. 5 Counsel, please make your appearances for 6 the record. 7 MS. WHITTEN: Hannah Whitten for the 8 plaintiffs. 9 MR. WHITTEN: Reggie Whitten for the 10 plaintiff. 11 MR. WHITE: Joe White for the plaintiff. 12 MR. DELIGANS: Ryan Deligans for the 13 plaintiff. 14 MR. SONNE: Blake Sonne for the plaintiff. 15 MR. LEFFEL: Lance Leffel for the 16 defendants. 17 MS. ZOLNER: Erica Zolner for the 18 defendants. 19 MS. POWERS: Tiffany Powers for the 20 defendants. 21 THE COURT: Thank you. 22 All right. We are here today in the 23 courtroom assigned to myself, Judge Palumbo, at the 24 determination that several depositions of defense 25 witnesses necessitated actually taking place here in

Page 5 1 this location for the expressed purpose of this 2 Court having the immediate ability to weigh in on 3 any issues that may arise in a timely manner to 4 prevent further delay. 5 Now, having just been asked to come out 6 for the first time to weigh in on an objection that 7 was raised in this deposition, based on the fact 8 that we have about what looks like \$3,000 worth of 9 food sitting in my office waiting for you all, I 10 think it would be an opportune time for me to now go 11 ahead and address some things via announcements and 12 instructions. 13 So while this record is not particularly 14 being made pursuant to any hearing or motion that 15 was set, since I have all parties present, I think 16 it is prudent to do it now. 17 I want to discuss three things, discovery, 18 witnesses, and media, because these are issues that 19 have been addressed throughout this case. And as it 20 stands, we are ten weeks away from today from 21 picking a jury, and that is my focus. 22 As it pertains to witnesses, the thought 23 occurred to me that it may be valuable for me to 24 share my thoughts, because, as a practitioner, I 25 would certainly want to know what the judge is	Page 7 1 who have suffered sexual trauma and abuse, of 2 watching hours of police interrogations of 3 in-custody defendants, many -- only a few of you in 4 this room probably know, many of those hours 5 sometimes consists of literally asking juries to 6 watch dead silence to see and make a determination 7 whether a statement is actually made under duress or 8 through coercion and all those types of things. 9 And now I have watched while they watch 10 civil witnesses. Okay? And the culmination of all 11 of my observation from this vantage point, which is 12 different. Right? Because I've done both sides in 13 other arenas. That is what leads me to very 14 strongly believe that the best testimony is going to 15 be live testimony, and if memory serves and my notes 16 serve, when the unsuccessful Motion to Quash was 17 argued, Ms. Manduca, being a human, who works, who 18 takes vacations, really stands out. Those are not 19 going to be reasons that are going to be compelling 20 for me to excuse her absence. 21 I don't know what any of your thoughts 22 are, but I am not excited about impaneling a bunch 23 of people at Christmastime and then parking them in 24 front of a TV and asking them to watch six days of 25 videos because it's convenient. So those are some
Page 6 1 thinking. And my preference is always going to be 2 live witnesses in trial. Okay? It is extremely 3 important that our jury is able to see and evaluate 4 fully, head to toe, the nonverbal responses and all 5 of the communication on the way that things are 6 delivered in order to best determine what the 7 strength and credibility is of the evidence that is 8 presented in this case. 9 When videos are played in my courtroom, 10 which is cavernous, the largest one in the entire 11 state, here's what happens: Lawyers tune out. You 12 guys have already seen the evidence. You know 13 what's going to be played and you utilize that time 14 to, you know, prepare for your next witness, prepare 15 other stages of trial. I certainly don't fault you 16 for that, but you're not watching the video and 17 you're not watching the jury for hours on end and I 18 am. 19 I've sat in this exact seat and I have 20 watched in over 50 criminal felony trials, and now 21 multiple civil trials, as juries evaluate evidence 22 because that's part of my job, and what I can tell 23 you, having done that, having watched juries of your 24 peers as they have been beholden to viewing 25 countless hours of forensic interviews of children	Page 6 1 thoughts I'm just throwing out there. 2 Second, discovery continues to be an issue 3 in this case. You've been on notice since 4 November 14th of last year to get ready, and I am 5 not happy. The order of this Court was full and 6 flawless production. Period. Instead of 7 compliance, now this Court has to deal with novel 8 issues of white boxing, or whatever you call it, 9 questions regarding the authenticity of the 10 production without metadata, failing to comply with 11 privilege logs, document dumps that are in direct 12 defiance of what the statute requires. 13 I'm seeing you're filing more Motions to 14 Quash. You're asking me to look at more subpoenas. 15 And I'm sitting here babysitting depositions. It 16 should not be the requirement of the Court when 17 motions are argued on Monday, and I direct State 18 Farm to provide an exhibit to my office for my 19 in-camera review, and that is delivered unnumbered. 20 I have to lay it out side by side, physically go 21 through, number it myself, and I'm the one who 22 discovers that only 17 of 19 pages were turned over. 23 And then the next day, when I point this out, I've 24 got the lawyer from Chicago telling me, "No, Judge. 25 We emailed that to your bailiff." No, that's not

Page 9 1 what happened. State Farm emailed one page, a 2 different page, the cover page, to my clerk, which 3 your local counsel, right here, knew, as well as I 4 did. 5 And all of this illustrates that there are 6 way too many cooks in this kitchen. There is a 7 significant lack of communication, cohesiveness, 8 and, in my opinion, based off of what I see, what I 9 have asked for, the opportunities that I have 10 repeatedly suggested, stop sending your lawyer in 11 here to argue how difficult this is. Bring in a 12 live person to put on the stand to tell me that. 13 That has not happened. 14 It shouldn't also require my staff sending 15 an email at 2:00 yesterday afternoon to get the 16 missing two pages. I don't know what the status is 17 on the discovery, I don't know what the status is on 18 a videotape. A videotape. Okay? That had been 19 turned over previously that we have a still from, 20 those things -- at this point, what I need to be 21 hearing is, "It's been turned over fully, 22 flawlessly." Period. 23 Lastly, media. No later than 40 days from 24 today, I would like you to each submit briefs. 25 They're going to be ten pages or less that is not	Page 11 1 the Court had previously explained, this is a closed 2 proceeding. This is not a hearing, etc. 3 So all of these things are weighing on my 4 mind when it comes time to putting 12 people, plus 5 probably a bunch of alternates in that box, and the 6 more that this -- the more fights that are had, the 7 more filings that we have, the more this drags out, 8 and the more delay, in all of its various shapes and 9 forms, is going to be harder to seat a jury. The 10 hardest jury I ever sat is a death penalty. I don't 11 want this insurance case to be tantamount to that. 12 So my thoughts are, potentially, one way 13 that we can solve this -- and, again, as I told you 14 when I first brought up this issue, local Court 15 Rule 39.1 does address this. I want you to talk to 16 your clients about these issues. I want your 17 thoughts. And I will certainly take them into 18 consideration, but one potential thought that I have 19 is maybe it would be prudent for the Court to put up 20 some guardrails now and then televise this trial 21 with full transparency. 22 I don't know, but what I am further going 23 to order is that prior to you turning in your briefs 24 in the next 40 days or sooner on this issue, y'all 25 are going to have some type of face-to-face actual
Page 10 1 inclusive of exhibits or authority. I want you to 2 detail in writing your individual positions as it 3 pertains to media coverage access in this case. 4 Just this week, defense brought up the 5 fact that the plaintiffs have been in the news quite 6 often about this. I think that they kind of voiced 7 their concern that maybe this case would be -- I'm 8 paraphrasing from memory, but basically being tried 9 in the press. 10 I did notice that -- I didn't bring it out 11 here with me, but a pleading filed -- or a brief 12 filed by plaintiffs that had a pretty spicy title, 13 something like "Supplement for Clarification as to 14 Evidence of Bad Faith from State Farm Executives," 15 something like that. 16 Guys, here's my thoughts. Okay? And I 17 understand that there is also continuing argument 18 about is the protective order that's in place being 19 egregiously violated or is it not, all those things. 20 Here's my concern now. Every day that this is 21 getting more traction, more attention, and if it's a 22 slow news day in Oklahoma City -- and news cameras 23 were here today asking my staff why there's paper on 24 the doors, why they can't come in, what is 25 happening. And we had -- Charles explained that, as	Page 12 1 meet and confer in good faith taking all the things 2 that I've said and all of the stuff that has gone on 3 that I'm not even privy to in how this case is 4 unfolding and see what you can work together 5 creatively to present to me by agreement. If not, 6 I'll weigh in and I'll make the determination. But 7 I'm getting ready to try this case, and it appears 8 that we're still quite in the thick of things, so I 9 don't know how we're going to be ready to do this 10 December 7th. 11 So those are some of my thoughts, and 12 that's going to conclude this record. 13 All right. Do you need anything else from 14 me, or do you guys want to take a lunch break? 15 MR. WHITTEN: I have one quick thing. We 16 have asked over and over and over for the electronic 17 version of the document you are trying to examine, 18 if you ever get it, in camera. We have -- I don't 19 have the final opinion on this, but we have reason 20 to at least suspect that there's metadata that's 21 showing what's behind the curtain. It may be that 22 that's wrong, but we have enough to look, and we 23 want to see that. 24 And all we ever get from Lance is, "I'll 25 take that under advisement." But we should have

Page 13 1 already had it turned over to us. It needs to be 2 turned over to us. We'd like to be having our 3 computer experts see if there's stuff behind the 4 metadata. There may be other people copied. There 5 may be further -- we've seen this in other cases 6 where there's other emails and other people on it 7 that you can't see in this version but you can see 8 in the metadata version. 9 We just want to look. We don't know 10 what's there, but it's a reasonable discovery 11 request. And instead of saying, "We'll send it to 12 you tomorrow," we've been asking for it for days. 13 "We don't have it. We'll take it under advisement." 14 And, you know, depending on what we get, obviously, 15 we want to put it in front of you if there is 16 something. If that process is delayed -- why can't 17 we get something that they have? They have a 18 metadata version of that. We know that. 19 MR. LEFFEL: Your Honor -- 20 MR. WHITTEN: They scrubbed it is what our 21 experts tell us. The metadata has been scrubbed. 22 And, again, we don't have a final opinion 23 on that. That's why we want to look at it. We're 24 trying to get the case ready. And we will be ready 25 for trial, I assure you of that, Your Honor.	Page 15 1 all great law firms, big law firms, working on -- 2 this isn't the only Oklahoma law firm. And then we 3 know for a fact they have a robust in-house legal 4 team. There's no question. I know that. I've been 5 suing State Farm for decades. They have a huge 6 in-house legal team. 7 For him to suggest that Lance personally 8 hadn't had time to look into it, I don't doubt that. 9 This guy is working too hard. We're not asking 10 Lance to do it. We're asking State Farm, the 11 largest insurance company. They insure one fifth of 12 every American and they don't have time to get the 13 metadata so we can at least find out if we're 14 missing something? Because, if we get it, we just 15 want to show it to you in camera. 16 MR. LEFFEL: Your Honor -- 17 THE COURT: Hang on one second. 18 This specifically pertains to Exhibit 16? 19 MS. WHITTEN: It does. 20 THE COURT: Okay. 21 MS. WHITTEN: But they also -- 22 THE COURT: I know that you want it on a 23 lot of other things but -- 24 MS. WHITTEN: Yes. And, specifically, one 25 of the biggest issues is Exhibit 133/14 for the
Page 14 1 MR. LEFFEL: Your Honor, I think I first 2 heard about that on Monday. As you know, I was in 3 your courtroom until after 5:00 p.m. and with my 4 witness until 8:00 at night. We were immediately 5 yesterday spending all day, and we did get the 6 documentation that you requested to you yesterday 7 afternoon. We're now back in the courtroom. We've 8 been here since 8:00 a.m. So, no, I have not had a 9 chance to find out what document that we're talking 10 about and figure out whether that was just how it 11 was stored or what the issues are behind what 12 they're now raising a new issue about metadata. 13 MS. WHITTEN: And, Your Honor, it's not a 14 new issue, and it's not just one document. We are 15 being told that several of these documents have been 16 intentionally scrubbed of metadata. And we have an 17 ESI protocol ourself. We specifically asked that 18 all the production must be produced with the 19 metadata inherently in it, and that production has 20 not been complete. 21 MR. WHITTEN: Well, may I add this, Your 22 Honor? They've got two out of state law firms, 23 they've got Lance's firm -- which I have the 24 greatest respect for. No question about it. 25 They've got a total of five firms across this state,	Page 16 1 Court's in camera review. That is something we're 2 very interested in reviewing the metadata, and it's 3 being told to us that that document, specifically, 4 has also been scrubbed of metadata. But I can get 5 you a list of other documents that are, essentially, 6 empty or missing of metadata. 7 THE COURT: Okay. A couple quick things. 8 Yes, get me a list. Second, the 133/14 issue, you 9 can continue to inquire here today, etc., with that 10 same redacted version that we had all agreed upon on 11 Tuesday. 12 Now, I'm not going to make a further 13 determination until Mr. Leffel or State Farm has the 14 opportunity to file their written responses we 15 discussed, so I'm not going to order that they 16 provide a copy of that until after the Court has 17 made that determination. 18 Now, as it pertains to anything else that 19 the Court already has ordered production of that 20 you're seeking the metadata of, you can get me that 21 list at any time. 22 MS. WHITTEN: Yes, Your Honor. We will 23 absolutely supplement a list to you outside of any 24 privilege issue of 133. We will get a list to you 25 of documents you've already order to be produced

Page 17 1 that have no sufficient metadata. 2 MR. WHITTEN: The last thing I want to 3 say, Your Honor -- 4 THE COURT: Yes, sir. 5 MR. WHITTEN: -- I want to thank you for 6 taking the time to let us take up your courtroom. 7 And we had videos of the previous deposition that I 8 took of this young lady and today, and being in this 9 courtroom, you watch those two depositions side by 10 side, they are night and day difference. Her level 11 of cooperation today is far better than last time. 12 She virtually -- we put it in front of the judge in 13 Lawton. He'll look at this eventually. I think 14 it's now set for October 22, but she was rephrasing 15 all of my questions, not answering them. Today, 16 much better. But when this exhibit we're asking you 17 to look at in camera is not just any old exhibit. 18 THE COURT: I agree. 19 MR. WHITTEN: Our theory is it confirms 20 everything we've said in every petition we've filed 21 all over the state. It confirms they were looking 22 at the idea that it violated the Unfair Claims Act. 23 It confirms they were lowering claims by a 24 percentage, by a goal, by billions of dollars before 25 the claims ever even happened.	Page 19 1 THE COURT: Let me comment. For 2 clarification, I'm pretty sure I'm the one who 3 signed all the pro hac vices that I've been getting. 4 It's not that I'm saying these additional counsel 5 are unqualified. What I'm saying is, my perception 6 is, we don't have a cohesive idea about what's going 7 on, and that's what concerns me. As it pertains to 8 after the answers of, like, where are things? How 9 are things going? Who is responsible for getting us 10 things? Those types of questions. That was what 11 I'm pointing out. 12 And I think we have all stated numerous 13 times that, Mr. Leffel, you are clearly doing your 14 very level best on this case and all of the other 15 cases that you have. I do not dispute that. I 16 don't doubt that. I'm happy that you have other 17 people, because, most often, you come in on your 18 own, practically. Almost every time against a full 19 table on the other side. 20 That being said, I don't understand how it 21 is that adding more qualified people is not quickly 22 resolving a lot of the issues that the Court's made 23 abundantly clear are issues. 24 MR. LEFFEL: So on that issue, I think it 25 relates to the documents that we were asked to
Page 18 1 Now, that is such an important exhibit. 2 And the other day when you asked them to give it to 3 you in camera -- and I believe his partner, David 4 Herber said, "I'll get it over here on the lunch 5 hour." Well, all of a sudden, it becomes very 6 difficult to get it. I suspect that I know exactly 7 why. They're looking at it because that is a very 8 important dagger in the heart of State Farm. It's 9 not just an ordinary exhibit. 10 MR. LEFFEL: Several things, Your Honor. 11 THE COURT: Yes, sir. 12 MR. LEFFEL: Number one, on the issue with 13 the documents that are still under review by the 14 Court, your guidance yesterday was taken. We didn't 15 have any issues with that. The questions were 16 answered. I'm preserving my privilege objection but 17 letting the witness answer. 18 THE COURT: Yes. 19 MR. LEFFEL: The next thing that I want to 20 mention is that there's been a ton of talk, and this 21 allegation keeps being made, that it's somehow 22 improper who State Farm hires to represent them in 23 these cases. Each of these people have been duly 24 admitted through pro hac vice motions. There is -- 25 that's not relevant to any issue, and I hear --	Page 20 1 deliver. Those were delivered to you. It was then 2 discovered that it was at least confusing in the way 3 that it was presented. And so, yesterday, when we 4 received communication from the Court, I had an 5 opportunity to finally sit down and look at them, 6 and one's not Bates numbered because it's not been 7 produced. We only put Bates numbers on the 8 production. It's the unredacted version of a 9 document. 10 And one of the part of the confusion -- I 11 don't want to get into granular detail here, was 12 that there were two cover emails. One of those 13 cover emails appeared in the middle of the document. 14 Once I saw them side by side with what you had, I 15 used the numbers that you hand-wrote on there, which 16 didn't really track with the way the document read, 17 but I could see what they were trying to explain to 18 me when I saw it with my own eyes because there was 19 a new cover letter. There was, like, several series 20 of the same document being transmitted in that 21 email. I'm confident, based on what I looked at 22 yesterday, that we were able to look at it side by 23 side and get you everything that was in both 24 documents, redacted and unredacted. 25 THE COURT: You did, but here's my issue.

Page 21 1 I cannot imagine a world where Ray Elliott, Twyla 2 Mason Gray, Susan Caswell, anybody ordered me to 3 produce something in camera, and I was busy and I 4 had a second chair and a third chair and interns and 5 tons and tons of people, and I was, like, "Take it." 6 I didn't look to see. And I'm not -- I'm not 7 blaming you. I'm saying, you know that -- you know 8 that discovery -- everybody knows discovery is an 9 issue, and on a 19-page document, 17 out of 19 10 pages, in context of all of the other issues that 11 have arisen as it pertains to discovery, it's just 12 wild to me that it took you, being lead counsel, me 13 having to lay them side by side, and you have me do 14 this. I don't know who's doing it a GableGotwals, 15 or whatever firm, or whatever helper, my whole point 16 is: If it was a priority, it would be done right. 17 And I don't know that -- it's super 18 plausible that these things are accidents. I don't 19 know because it's so rife with issues. If 20 production had been flawless from day one, I 100 21 percent would have given State Farm the benefit of 22 the doubt and said, "Oh, this was just an oversight. 23 They were super busy in a deposition," but I think 24 you can see how it could at least possibly not be a 25 great look. You know the documents, I don't. I	Page 23 1 interjecting this based on what Reggie said because 2 I've argued this for months in front of Your Honor. 3 When they gave us a document, they did not do what 4 they were supposed to do, which is: Delineate them 5 by request or some sort of index. They literally 6 provided hundreds of thousands of documents. And so 7 we have been -- with a considerable expense and 8 effort to go through these documents and then to 9 learn that they have not complied, from our opinion. 10 We are filing a motion about the ESI protocol and 11 the metadata, which is why you have to have that 12 when you produce e-discovery, because, otherwise -- 13 for example, I'll give you one example. 14 I think they argued in front of this Court 15 how Jon Farney, we can only argue -- we could only 16 find two or three emails or four emails from Jon 17 Farney. Remember this argument, Your Honor? And 18 then we come to find out, the CEO -- and then we 19 come to find out that they had email blocks that 20 include multiple people that are in their email 21 blocks. So, of course, if we're searching for 22 Farney, that won't come up. 23 And then we find out they have the SEO, 24 which is the senior executive off-site meeting, that 25 the CEO actually attends. And so what we're doing
Page 22 1 ordered you to bring them over, and I got a chunk of 2 stuff that's missing two pages that I had to figure 3 out. And how I figured it out is because I compared 4 the fine print and went, "Where is the stuff that is 5 supposed to be this giant box that says AC? It's 6 missing." 7 So that's -- and maybe I misnumbered them 8 differently, or whatever. My whole point is: It's 9 just illustrative of the issues. I know you are not 10 responsible for doing all these things. 11 MR. LEFFEL: And, again, I mean, the two 12 documents that were missing were cover emails. 13 THE COURT: I don't care. The words of 14 the emails were important enough to show it was 15 redacted. I'm supposed to be looking at what's 16 redacted. 17 MR. SONNE: Can I interject, too, one 18 point, is that, to add on what Reggie was saying, 19 defense counsel has admitted before this Court that 20 there's five versions of this document. 21 THE COURT: Right. 22 MR. SONNE: That's what they said 23 yesterday in Court. We are going to produce an 24 affidavit from a computer expert about the way these 25 documents have been presented to us. And I'm	Page 24 1 is we are hearing State Farm's positions in briefs 2 and in arguments before the Court, and then we see 3 the data and we just uncover and uncover and uncover 4 it, and it's misleading after misleading after 5 misleading after misleading, and that's the problem. 6 And so when we're talking about this 7 document, which I presented to Mr. Herbert in 8 Bloomington, Illinois, that did exactly what 9 Mr. Whitten said and shows, and now there's five 10 versions of it, they've not produced the metadata -- 11 and the original document was redacted. So 12 Ms. Whitten's point, there's never been a privilege 13 log produced. 14 MR. LEFFEL: That's actually inaccurate. 15 We produced a privilege log that was over 200 pages 16 last month. 17 MS. WHITTEN: It's incomplete and 18 deficient. I just went through this yesterday. 19 MR. LEFFEL: Your testimony was that no 20 privilege log has been provided. 21 MS. WHITTEN: None of the attorney-client 22 redactions on Exhibit 133 is in there at all. It 23 came late. None of the redactions of Exhibit 133 24 pending in front of the Court are listed on that. I 25 have redactions that are not on that privilege log.

Page 25 1 They didn't send it to me over email. We got in a 2 hard copy mail and we got it a couple weeks ago. It 3 is the most inefficient privilege log I've ever seen 4 in my life. And so I am requesting a new privilege 5 log that actually governs the attorney-client 6 privilege that you redacted on Exhibit 133. 7 And if I may, Your Honor, if we were doing 8 white box redactions on our production without 9 producing a privilege log to State Farm, I would bet 10 you that they would be sitting here in front of you, 11 Your Honor, asking for sanctions against us, because 12 I have no ability to determine what has been 13 redacted. Is the entire page redacted? Are there 14 multiple paragraphs redacted? It's just a blank 15 page designated "Confidential." 16 MR. LEFFEL: The argument has now changed 17 from, oh, we did provide a privilege log. They just 18 believe it's insufficient, and now we're getting 19 into speculation what we would or would not do if 20 the shoe was on the other foot. This is not an 21 appropriate subject of argument here, Your Honor. 22 MS. WHITTEN: It is not speculation to say 23 that you would not object to having no privilege log 24 if we were redacting voluminous documents and had no 25 ability to challenge that privilege.	Page 27 1 sure that it's reflective of your order here today. 2 THE COURT: All right. Here's what it 3 says. "Discovery witness is immediate. Discovery 4 continues to be an issue. This Court ordered full 5 and flawless compliance with production. The Court 6 has been presented with evidence of white box 7 redactions, no metadata, no privilege log, and 8 others. On media, parties to submit briefs 10 pages 9 or less about positions in the media -- I'm going to 10 add within 40 days." 11 MS. WHITTEN: I apologize. 12 THE COURT: That's okay. 13 "One potential possibility from the Court 14 to allow for a full jury to all sides is the Court 15 puts media guardrails on now and then allows media 16 potentially at trial. Parties to meet and confer in 17 person on these issues prior to submission of briefs 18 to determine what they agree on. This Court expects 19 witnesses to appear live. This Court orders that 20 Nicole Manduca must testify as a corporate 21 representative in a non-evasive manner, and the 22 length of the deposition may extend beyond six 23 hours, as needed, per this Court." 24 MS. WHITTEN: Thank you, Your Honor. 25 THE COURT: Thank you all. All right.
Page 26 1 THE COURT: All right. Here's the 2 situation. It's very clear, not only what the 3 authority requires, what the orders of this Court 4 have been. All parties shall comply. Not when it's 5 convenience, not after 640 magic, unnamed lawyers 6 have looked at it and then they accidentally give 7 stuff, and then it doesn't go well and then they ask 8 for it back. Get it together and make sure that 9 this case is labeled a priority. Because this is 10 nonsensical and unnecessary and is going to come to 11 a screeching halt. If that landing place is 12 sanctions, there are severe ones that are available 13 to this Court. I went into great detail about some 14 of those things in prior hearings, and I will not 15 hesitate to apply them if I feel they are warranted. 16 There are only so many times that we can 17 have this discussion. We've had it ad nauseam, 18 because it's not getting fixed. So do whatever 19 needs to be done to fix this. 20 Is there anything else? 21 MS. WHITTEN: Your Honor, just because 22 this is such an important hearing, I did prepare a 23 minute order -- 24 THE COURT: Thank you. 25 MS. WHITTEN: -- and I just want to make	Page 28 1 MR. WHITTEN: Your Honor, may I request 2 that State Farm tell you, my suggestion would be by 3 close of business today, number one, when they will 4 get the metadata version of the document you're 5 looking at in camera. And, number two, when will 6 they get us the metadata version of all the other 7 documents. It should have already been given to us. 8 Because they did not -- we defined our request in 9 our discovery. They just didn't follow it. And 10 they should. And -- say that again? 11 MS. WHITTEN: We're going to supplement a 12 list to the Court. The Court has requested we 13 supplement a list of the documents outside of 133. 14 MR. WHITTEN: We just need a timeframe, 15 because if we leave here today, I feel it will be 16 the same. The check will be in the mail maybe one 17 of these days. We just need a time. 18 THE COURT: Maybe a nice way to solve this 19 is just set hearings that are show cause hearings to 20 actually require State Farm to present to this Court 21 viable credible evidence as to why they are unable 22 to comply with the orders of this Court. Maybe 23 that's a step before visiting sanctions. 24 These are not things I want to do. I love 25 this case. I love all the lawyers involved. You

Page 29 1 all know this. But this is not how the law expects 2 cases to proceed. And the fact that State Farm has 3 many cases across the nation and is just spread 4 really thin, allegedly, at this point in the 5 proceeds, when we're ten weeks out from trial, it 6 doesn't work for me. 7 Because I'm also under the impression, 8 unless something's changed, that many -- that there 9 are literally hundreds of other cases across this 10 state with my colleagues that are essentially on ice 11 waiting the determination of what happens here, 12 which means there's a lot of Oklahomans who are in a 13 holding pattern until this can be determined. So it 14 is of paramount importance. And unless somebody 15 gets on the stand and convinces me otherwise, that 16 is where we're heading. 17 So as to your request, Mr. Whitten, I've 18 got to be honest, I don't even know what metadata 19 is. Okay? I'm like the least tech savvy person on 20 earth. Okay? I don't know anything about it, I 21 don't know -- I wouldn't know if it hit me in the 22 face. I don't know what I'm looking for, so I don't 23 know if I'm even going to have to have you get me 24 something or some example or some Metadata for 25 Dummies to even show me. I don't know. I don't	Page 31 1 CERTIFICATE 2 STATE OF OKLAHOMA) 3) SS: COUNTY OF OKLAHOMA) 4 I, Becky Dame Steinkamp, Certified 5 Shorthand Reporter within and for the State of 6 Oklahoma, do hereby certify that the above and 7 foregoing proceedings were by me taken in shorthand 8 and thereafter transcribed; that I am not an 9 attorney for nor relative of any of said parties or 10 otherwise interested in the event of said action. 11 IN WITNESS WHEREOF, I have hereunto set my 12 hand and official seal this 7th day of October, 13 2026. 14 15  16 <u>Becky Dame Steinkamp, CSR, RPR</u> 17 18 19 20 21 22 23 24 25
Page 30 1 know if it will look the same. I don't know what 2 I'm looking for. I don't know if it's going to be 3 apparent. 4 So all that to say, I do understand the 5 frustration. Now that you know I don't know 6 anything about metadata, if you think that it's 7 prudent to put something together in a succinct way 8 that's going to brief me on this issue, please feel 9 free to do it. And I'm going to defer that metadata 10 issue and ordering the production of that electronic 11 metadata, whatever, 14/133, until after we have our 12 hearing after you filed a response. Okay? 13 As it pertains to all the other things in 14 the list forthcoming, that's going to have a real 15 quick turnaround time, because as far as I'm 16 concerned, every single thing is already late. 17 MR. WHITTEN: Thank you, Your Honor. 18 THE COURT: All right. Thanks, guys. 19 With that, enjoy your lunch. My staff actually left 20 so you can have free rein, whatever you want. 21 (PROCEEDINGS CONCLUDED AT 12:09 P.M.) 22 23 24 25	

EXHIBIT 6



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SEP 24 2024

JOHN D. HADDEN
CLERK

WERNER ENTERPRISES, INC.,
Petitioner,

v.

THE HONORABLE KORY KIRKLAND,

Respondent,

and

JODI CROSS, as Personal Representative
of the Estate of RAE ANN DARROW, deceased,

and

TIMOTHY CLEMONS and MICHAEL DENNIS PECK,

Defendants.

No. 122,385

Rec'd (date)	9-24-24
Posted	JM
Mailed	JM
Distrib	JM
Publish	yes ☒ no ☐

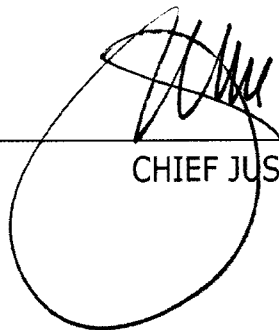
ORDER

Original jurisdiction is assumed. Okla. Const. art. 7, § 4. Petitioner Werner Enterprises, Inc.'s application to assume original jurisdiction is granted. A writ of mandamus is issued to Caddo County District Judge Kory Kirkland, or any assigned judge, in *Jodi Cross, as Personal Representative of the Estate of Rae Anne Darrow, deceased v. Werner Enterprises, Inc., et. Al.*, CJ-2021-47.

Respondent's December 20, 2023 Order compelling production of certain documents is unenforceable, as Respondent did not consider the proportionality test as outlined in Title 12 O.S., Section 3226(B)(2)(c), in

determining the relevancy of the requested documents. Respondent, any other assigned judge, or a special master appointed by the district court shall review the discovery requests at issue and consider the proportionality factors stated in 12 O.S. Section 3226 (B(2)(c) along with all other statutory requirements before ruling on the discovery disputes.

DONE BY THE SUPREME COURT IN CONFERENCE ON THE 23rd DAY
OF SEPTEMBER 2024.



CHIEF JUSTICE

CONCUR: KANE, C.J., and WINCHESTER, GURICH, DARBY and KUEHN, JJ.
DISSENT: ROWE, V.C.J., and KAUGER, EDMONDSON and COMBS, JJ.