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OKLAHOMA COUNTY

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IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S
MOTION TO DISQUALIFY AND REQUEST FOR EVIDENTIARY HEARING

Defendant State Farm Fire and Casualty Company ("State Farm") respectfully moves under Article 2, Sections 6 and 7 of the Oklahoma Constitution, Rule 2.11(A) of the Oklahoma Code of Judicial Conduct, Rule 15 of the Rules for District Courts of Oklahoma, and 20 O.S. § 1403, for an order certifying the disqualification of Judge Palumbo. This is not a step State Farm takes lightly, but State Farm respectfully contends that disqualification is mandated by Oklahoma law, which provides that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." 5 O.S. § Rule 2.11(A).

Every litigant is entitled to the Court's impartiality and decisions based on evidence, not the Court's preconceived notions. Yet this Court has repeatedly attributed improper motives to State Farm, its executives, witnesses, and attorneys in proceedings that required no determination of intent. The Court has repeatedly declared why State Farm acted, without any evidentiary basis to do so, and in a case where State Farm's motives are a central and disputed issue. On 10/26/2026, the Court went much further. In determining whether attorney advice in an internal State Farm memorandum was privileged, the Court compared State Farm's executives to a ***group of***

kidnappers seeking advice from an attorney about ***whether it could store chloroform, zip ties and duct tape in a safe house for their activities***; and asserted that the advice of State Farm's in-house attorneys to the executives was like an attorney telling the kidnappers, ***that sounds a lot like kidnapping why don't we call it something else***. (*See* Ex. 11, Attorney Declarations.)[1] The Court's statements suggesting ill motive or conduct have become recurring aspersions on State Farm's (and its employees and attorneys') motives, intent, and "culture":

- "I think that wording on [State Farm's CEO's] affidavit was very intentionally done because I do not think that Mr. Farney wants to potentially ***commit perjury*** and possibly open himself up through ***criminal prosecution*** for doing so or contempt of court."
- "[State Farm's culture] is like a piece of baklava, ***layer upon layer upon layer upon layer of making sure that State Farm is airtight and insulated***."
- "[State Farm's decision to seek appellate remedies is] just very ***disheartening***."
- "[State Farm's reasons for not completing its production] have ***no credibility*** with this Court."
- "[T]here's this gargantuan and ever-growing team of lawyers and helpers and companies and corporations and multi tiers of people reviewing and redacting and ***making sure that everything is kosher first, and then, in compliance with the order of the Court second***."

This expanding record raises grave concerns regarding the Court's impartiality. That concern was heightened again on 10/28/2026 when the Court, two days after the oral request for disqualification occurred, rushed to rule on multiple motions, without a hearing.

I. BACKGROUND

This case involves a dispute as to the scope of damage to Plaintiffs' house arising from weather events in 2023 and 2024. Plaintiffs claim State Farm should have paid approximately $22,000 for alleged roof damage and assert claims against: (1) State Farm for breach of contract and bad faith; (2) agent Mark D. Welty and Mark D. Welty Insurance Agency for negligent procurement; and (3) all Defendants for constructive fraud and negligent misrepresentation. (Pet. ¶¶ 40, 45–79.) Plaintiffs allege a "scheme" by State Farm to lower indemnity payments by, *inter*

[1] State Farm has not yet received a copy of the transcript of the October 26 hearing, and will supplement this Motion when the transcript becomes available.

alia, misattributing roof damage from storms to non-covered "wear and tear." (*See generally id.*)

Plaintiffs have pursued vast discovery entirely disproportionate to the underlying dispute—and the Court has, to date, granted every one of Plaintiffs' motions to compel.[2] On 11/25/2025, the Court granted Plaintiffs' First Motion to Compel and ordered State Farm to produce information and documents Plaintiffs claimed were relevant to State Farm's purported scheme to pre-deny wind/hail roof claims, including information about FME, indemnity, managerial review requirements and every other thing that Plaintiffs could think to request.[3] Plaintiffs also issued a corporate representative deposition notice to State Farm seeking testimony and documents on 30 topics with 101 subparts, spanning 15 years of operations, and noticed the depositions of eight high-level State Farm employees—***including State Farm's CEO, Jon Farney***. The Court denied State Farm's motions to quash the corporate representative notice and Plaintiffs' notices of

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[2] The primary focus of Plaintiffs' discovery demands has concerned an internal State Farm initiative referred to as the Wind/Hail Fire Model Enhancement, or "FME"—which Plaintiffs allege was a plan to lower indemnity payments. Plaintiffs have now received ***over 750,000 documents in this case***. The cost of complying with the Court's discovery orders has already exceeded millions of dollars, and will cost millions more as the case proceeds to trial.

[3] The Court also ordered State Farm to produce: (a) training provided to agents regarding policy sales and underwriting; (b) information about its relationship with Haag; (c) Fire Property Claims Quality Plans since 2019 plus documents on initiatives concerning indemnity payments and roof replacement ratios, approval rates, and payments; (d) documents regarding notes, settings, and features related to third-party estimating software State Farm uses; and (e) emails or other correspondence to or from Nicole Manduca, Sharon Arnold, Tom Moss, and Susan Maynard, from January 2019 onward, about the FME and various metrics relating to roof replacements. Although State Farm chose to seek review by the Supreme Court, State Farm immediately began taking steps to collect and review potentially responsive documents that were the subject of the Court's Order. State Farm interviewed custodians across numerous business units to identify potentially responsive documents and searched for emails and communications from the files of tens of thousands of P&C Claims employees. Due to the volume, State Farm engaged a third-party vendor, Consilio, for hosting, process, first-level review, and production assistance. Consilio attorneys have spent more than 15,000 hours to conduct first-level responsiveness and privilege reviews and Consilio has invoiced nearly than $2.4 million for hosting, processing, first-level review, and production through September 2026. The Court also required State Farm to review over a ***hundred thousand of claim files for insureds and claims not at issue in this action***—a review which has already cost State Farm millions of dollars and involves 280 full-time reviewers.

deposition. The Court also allowed the Oklahoma Attorney General to intervene in this individual action to assert ORICO and other claims. The Oklahoma Supreme Court barred enforcement of that intervention order. *See State Farm Fire & Cas. Co. v. Palumbo*, 2026 OK 51, ¶¶ 6–8.

To date, State Farm has produced over 750,000 documents to Plaintiffs. The production included drafts of a memorandum that Scott Welsh, Director of P&C Claims Consulting, planned to share with other State Farm executives at a Senior Executive Offsite meeting (the "SEO Memo"). Mr. Welsh sought advice from State Farm's Law Department while drafting the memo, particularly in light of pending and anticipated litigation over State Farm's wind and hail claims handling. In-house attorneys commented on the drafts and proposed wording changes in consideration of the pending and reasonably anticipated litigation. Their suggested changes sought to describe State Farm's practices more accurately and reduce the risk that opposing counsel and juries would misconstrue the memo. State Farm produced draft versions of the SEO Memo and emails discussing those drafts. In the midst of producing over 110,000 new documents and reproducing over 640,000 documents from prior cases, State Farm inadvertently failed to fully redact all legal advice provided by State Farm attorneys in the SEO Memo. After Plaintiffs' counsel refused to honor State Farm's claw-back request in violation of 12 O.S. § 3226(B)(5)(b), the Court set a hearing for 10/26/2026 on State Farm's privilege claims.

The Court's Prior Comments About State Farm's "Culture" and Motives

The Court expressed settled views about State Farm's "culture" and motives even before the 10/26/2026 hearing. ***First***, the Court repeatedly impugned State Farm's intent in opposing the Attorney General's motion to intervene. The Court heard the Attorney General's motion on 12/30/2025. Before State Farm's counsel had been heard, the Court said it "fail[ed] to see how what State Farm filed . . . is anything other than irrelevant and disparaging" and that it understood

what State Farm wanted the Court to "get distracted by." (Ex. 1, 12/30/2025 Tr.., 10:17–19, 11:20–23.) The Court granted the Attorney General's motion.

At the 2/5/2026 hearing on State Farm's motion to reconsider and stay the Court's order, the Court stated that State Farm had waited until it received "an unfavorable ruling" and then "set in motion a series of ***let's delay***." (Ex. 2, 2/5/2026 Tr., 32:6–15 (emphasis added).) The hearing record showed the opposite. State Farm's counsel explained that State Farm moved for a stay, informed the Court's staff that it had "an emergency request for stay," and asked for "the earliest possible hearing date," but was given a March hearing date. The hearing was moved up only after *Plaintiffs* filed an expedited request. (*Id.* at 26:1–17.) The Court acknowledged the matter was set for March until Plaintiffs "put [it] on [the Court's] radar." (*Id.*. 32:23–33:4.) The Court nonetheless blamed the timing on "***State Farm's clear directive to you to do nothing as long as possible***," and told counsel: "You could have filed a writ earlier. You could have asked for a stay earlier." (*Id.*, 33:12–21 (emphasis added).) The Court then turned to State Farm's writ filings: "I understand that you were waiting for a decision, but when I see things like . . . maybe the Supreme Court is being utilized in some type of like a discovery master-esque role, it's just very disheartening." (*Id.* at 33:22–34:3.) Seeking review is a litigant's right, but the Court characterized State Farm's invocation of it as "disheartening" and obstruction. At the time, State Farm's writ on the intervention order was pending. The Supreme Court later granted it.

Second, at an 8/4/2026 hearing on Plaintiffs' motion to enforce the Court's orders granting Plaintiffs' discovery demands, the Court stated that State Farm's reasons for not yet producing certain materials had "no credibility with this Court." (Ex. 3, 8/4/2026 Tr., 15:6–14.) The Court later characterized State Farm's litigation strategy as: "we'll file motions, we'll have the briefing schedule, we'll get it set, ***we'll just blow deadlines because that is what works for us***." (*Id.*,

26:19–23 (emphasis added).) Apparently realizing the impact of these comments, the Court added: "And I say that not because I am not capable of being fair and impartial, I say that because it is an observation based on the evidence that State Farm has sent you in here with." (*Id.* at 26:24–27:5.) The record shows otherwise. State Farm produced more than 150,000 pages within seven days after its request for a writ was denied, followed by four additional productions totaling more than 250,000 pages, and offered deposition dates between 8/27/2026 and 9/16/2026 for every ordered witness except one retired witness living outside the country. (*Id.*, 18:24–19:7, 27:13–23.)

Third, on 9/1/2026, the Court heard State Farm's Motion to Quash the deposition of State Farm's CEO, Jon Farney. At the hearing, State Farm's counsel emphasized the evidence establishing Mr. Farney's lack of relevant knowledge, including a declaration from Mr. Farney disclaiming involvement in the FME. Plaintiffs' counsel responded not with contrary evidence, but by criticizing Mr. Farney's declaration, particularly his statement that he "was not directly involved in the FME," arguing to the Court that this statement meant that "clearly, he was indirectly involved." (Ex. 4, 9/1/2026 Tr., 25:19–26:2.) The Court adopted Plaintiffs' counsel's baseless characterization and then commented on Mr. Farney's credibility, citing an email Plaintiffs had attached as an exhibit to a different motion (not at issue at the 9/1 hearing) as "overwhelming evidence" of State Farm's culture:

> **THE COURT**: Okay. All right. One thing that -- that -- so I honed in immediately on the direct or other knowledge because the absence of the evidence is sometimes just as important as the evidence. Also, in my preparation and Exhibit 19, I've got, "What is this," when looking at our other motions, the motion to strike and redesignate. And here is what I see from Eric Bailey, "Looks fantastic. Thank you for all the work on this. One suggestion in the monitor and measure area, and can we change 'reduce' to 'target?' I fully understand the meaning, but I think the lawyers would caution us on how others might use the terms of the contents."
> That is overwhelming evidence of the culture in this company, layer upon layer. ***And I'm saying that based off of what my experience has been with every State Farm case that you have appeared on in front of me.*** It is like a piece of baklava, layer upon layer upon layer upon layer of making sure that State Farm is airtight and insulated.

> I think that wording was not haphazard. ***I think that wording on that affidavit was very intentionally done because I do not think that Mr. Farney wants to potentially commit perjury and possibly open himself up through criminal prosecution for doing so or contempt of court.***

(Ex. 4, 9/1/2026 Tr., 40:2–25 (emphasis added).)

Fourth, at a 9/29/2026 hearing during the deposition of State Farm's corporate representative regarding a dispute that arose as to Plaintiffs' use of the privileged material inadvertently produced in the SEO Memo, the Court speculated that State Farm's production was not inadvertent: "[T]here's this gargantuan and ever-growing team of lawyers and helpers and companies and corporations and multi tiers of people reviewing and redacting and making sure that everything is kosher first, and then, in compliance with the order of the Court second, and then, third, turning it over way beyond typically the order of this Court." (Ex. 5, 9/29/2026 Tr., 11:17–12:3.) ***The Court made these remarks despite that the issue had not even been briefed as of the impromptu hearing***. After State Farm explained that it was doing its best to review thousands of documents for responsiveness and privilege, and that production of the privileged document was inadvertent, the Court aligned with Plaintiffs:

> **[PLAINTIFFS' COUNSEL]**: Judge, I think it's important for the record that, basically, every time we're in front of you, I hear the word 'overbroad' about their production orders.
>
> **THE COURT**: Yeah, I'm kind of tired of that.

(Ex. 5, 9/29/2026 Tr., 18:5–10.) And at a subsequent 10/1/2026 hearing, convened without prior notice during the deposition of another State Farm corporate representative, the Court ridiculed State Farm's explanation that the production was inadvertent, called it "nonsensical," and referred to a fictitious review by "640, ***magic unnamed lawyers***" who "have looked at [the document] and then they ***accidentally give stuff and then it doesn't go well, and they ask for it back.***" (Ex. 7, 10/1/2026 Hrg. Tr., 26:1–11, (emphasis added).) The Court used that exaggeration to discredit

State Farm's explanation and prejudge whether the production was inadvertent.[4]

Fifth, after hearing only two answers from Nicole Manduca's corporate representative deposition, the Court found that she was trying to "derail" the case. Plaintiffs interrupted the deposition after three questions and sought immediate "guidance." The Court reporter read back only the first two exchanges, omitting the third. The Court then sarcastically asked how many times Ms. Manduca had been deposed "Dozens? Hundreds?" and whether she had "lost count." After Ms. Manduca answered: "Six times," the Court immediately declared that her testimony was "absolutely evasive behavior," "a complete frivolous waste of this Court's time," and "meant to derail this proceeding." (Ex. 8, 10/1/2026 Manduca Tr.15:1–18.) State Farm supplied the omitted testimony on reconsideration, but the Court denied the motion, left the deposition open "as necessary, so long as it is fruitful," and relied on a later ruling concerning Ms. Manduca's testimony in another case rather than examining the full record in this case. (Ex. 9, 10/28/2026 Email Order.)

The Court's Comments at the October 26, 2026 Hearing

Despite the Court's comments at the 9/29/2026 hearing suggesting that it had predetermined its ruling as to the SEO Memo, the Court had given State Farm one week—until 10/5—to prepare a brief supporting its privilege claim. The Court also required State Farm to provide unredacted versions of the SEO Memo drafts to the Court for *in camera* review. On 10/5/2026, State Farm filed a brief substantiating its privilege claims privilege with multiple, detailed affidavits from the relevant business and legal personnel involved. (*See* Ex. 10, 10/5/2026 Br. in Support of Privilege.) Plaintiffs replied on 10/23/2026, arguing without pointing to specific evidence, that the attorney advice should not be protected.

[4] The Court also expressed its views on the evidentiary impact of the SEO Memo, agreeing with Plaintiffs' counsel's assessment that it "is not just any old exhibit." (*Id.* at 17:16–18; *see also id.* at 18:7–9 (describing it as "a very important dagger in the heart of State Farm").)

The Court set the issue for a hearing on 10/26/2026, the next business day.[5] At the 10/26 hearing, the Court ignored Plaintiffs' improper use of the clawed back documents and entertained Plaintiffs' arguments about their substance. The Court responded to the parties' argument by impugning State Farm and its motives. The Court analogized State Farm's request for attorney advice in the SEO Memo to ***kidnappers*** seeking advice from an attorney about ***whether it could store chloroform, zip ties and duct tape in a safe house*** and having the attorney advise them, ***that sounds like kidnapping, call it something else***. (*See* Ex. 11, Attorney Declarations.) The Court further stated that the attorneys' comments advised wording changes to put "frosting" on State Farm's wrongdoing so it could "keep the good times rolling." (*See id.*) *The Court held that the SEO Memo and cover emails were not privileged, and denied State Farm's motion for a stay of the ruling pending State Farm's right to seek Supreme Court review.* (Ex. 12, 10/26/2026 Minute Order.) After these comments, State Farm made an oral Rule 15 motion, which the Court denied and then adjourned the hearing (despite that other motions were set to be heard).[6]

II. RULE 2.11(A) REQUIRES DISQUALIFICATION WHEN IMPARTIALITY MIGHT REASONABLY BE QUESTIONED.

Due process entitles every litigant to an impartial and disinterested tribunal. U.S. Const. amend. XIV; Okla. Const. art. 2, §§ 6–7; *see also Clark*, 2001 OK 56, ¶ 6, 32 P.3d 851, 854. The Oklahoma Constitution requires that "right and justice shall be administered without sale, denial, delay, or prejudice." Okla. Const. art. 2, § 6. Further, a judge "***shall*** disqualify himself or

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[5] Prior to the hearing, and after receiving the clawback notice, Plaintiffs—in violation of 12 O.S. § 3226(B)(5)(b)—continued to use the SEO Memo.

[6] On October 28, 2026, without any argument, the Court issued a ruling by email denying all of State Farm's motions set to be heard on October 26, granting Plaintiffs' Motion to Compel Re-Production of Electronically Stored Information and ordering reproduction of State Farm's entire 110,000 document production within seven days, and ordered State Farm to immediately produce to Plaintiffs an unredacted version of the privileged SEO Memo and cover email despite State Farm's representation that it would be appealing the Order. (*See* Ex. 9.)

herself in any proceeding in which the judge's impartiality might ***reasonably be questioned.***" 5 O.S. § 2.11(A) (emphasis added). Accordingly, "[w]here there are circumstances of such a nature as to cause doubts as to a judge's partiality, it is the judge's duty to disqualify ***notwithstanding the Judge's personal belief that the Judge is unprejudiced, unbiased, and impartial.***" *Miller,* 2007 OK 58 ¶ 17 (emphasis added). The Supreme Court has explained that "disqualification when impartiality is called into doubt is to preserve the purity and impartiality of the court and to foster the respect and confidence of the people for its decisions." *Id.* ¶ 16. For that reason, "courts must be sensitive to the appearances of possible impropriety as well as to actual occurrences." *Pierce v. Pierce,* 2001 OK 97 ¶ 13. Importantly, the question of a judge's appearance of impropriety is determined by an objective standard—not the Court's personal belief. *Id.* As such, "[e]rror, if any, should be made ***in favor of disqualification.***" *Miller*, 2007 OK 58 ¶ 20 (emphasis added).

Disqualification is ***required*** where a judge's comments reflect ***prejudgment as to factual issues***. *See, e.g., C.R.B. v. State,* 1978 OK CR 22, 575 P.2d 636, 637 (judge abused discretion where judicial comments indicated court had "prejudged the decision to order the juvenile to stand trial as an adult"); *Alley v. State of Tenn.*, 882 S.W.2d 810, 822 (Tenn. Crim. App. 1994) ("When a trial court's comments indicate that the judge has prejudged factual issues, Tennessee courts have required disqualification."); *Haines v. Liggett Grp., Inc.*, 975 F.2d 81, 97-99 (3d Cir. 1992) (reassignment required where opinion suggested court prejudged whether defendants conspired).

Judicial rulings, criticism of case management, and opinions formed from facts introduced during current or prior proceedings do not ordinarily establish disqualifying bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994). But even opinions formed during judicial proceedings may require disqualification when they display "deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* This motion does not rest on adverse rulings. It rests on the Court's

repeated attribution of improper corporate motives to State Farm, its express reliance on impressions formed through "every State Farm case," and its categorical assessments of issues—including central disputed issues—before the development of a complete record.

In *Miller*, the Supreme Court specifically held that where the lower court "question[ed a defendant's] veracity from the bench," disqualification was required:

> Throughout the proceedings it is evident that there was elevated tension between the trial judge and [defendant] Tal at nearly every hearing .... Both Tal and the trial judge had frequent colloquies which provoked the trial judge ***to question Tal's veracity from the bench***. The trial judge even bickered with Tal over whether he actually called him a liar, implied that he was a liar or merely informed him that ***he believed that some of Tal's story was concocted***. Tal contends that, at the very least, the appearance of bias and impartiality was created when the opposing counsel had *ex parte* communications with the trial judge's clerk and possibly the trial judge . . . .

2007 OK 58, ¶¶ 19–20 (emphasis added). Similarly, the Court of Criminal Appeals held in *Wilkett v. State*, 1984 OK CR 16, 674 P.2d 573, 575, that recusal was necessary where the trial judge "expressed resentment and accusations of dishonesty against defense counsel."[7]

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[7] Courts in other jurisdictions have likewise required recusal where the judge conveys the impression of a "hostile feeling" or "spirit of ill will" toward a party or its counsel. *See, e.g., In re Disqualification of Sheward*, 994 N.E.2d 452, 454 (Ohio 2013). In *Sheward*, the court disqualified a judge who threatened to put plaintiff's counsel "in a cell," "disparage[d]" plaintiff, described plaintiff's "attitude" as "he knows everything and no one else knows anything, especially the Court," and characterized as "lame" his "excuse" for not understanding the court's temporary restraining order. *Id.* at 453–55. As the court observed:

> Judges may express frustration toward attorneys and parties in their courtrooms, especially when a party may have violated a court order. But a judge, "notwithstanding the conduct of litigants or counsel, has an ethical obligation to conduct himself or herself in a courteous and dignified manner that does not convey the appearance of bias or prejudice toward litigants or their attorneys."

Id. at 454 (citing Code of Judicial Conduct). Disqualification was necessary to avoid the appearance of impropriety. *Id.* at 454–55; *see also Allen v. Rutledge*, 139 S.W.3d 491, 498–99 (Ark. 2003) (judicial bias established by the following statements to counsel: "I'm not up here to answer your questions" and "I can do anything I want to. I'm the Judge").

And, because a challenge to an assigned judge for want of impartiality "presents an issue of constitutional dimension," it "must be resolved and the ruling memorialized of record after a meaningful evidentiary hearing." *Clark*, 2001 OK 56, ¶ 7. "The quest for recusal may not be ignored, nor is a judge free to proceed with the case until the challenge stands overruled of record following a judicial inquiry into the issue." *Id.* When a Rule 15 proceeding to seek disqualification of a trial judge is initiated, "the trial court ***must refrain from presiding over the case until the disqualification ruling is memorialized and the movant has, at the movant's option, exhausted the Rule 15 procedure***." *Miller*, 2007 OK 58, ¶ 21 (emphasis added).

III. THE COURT'S REPEATED COMMENTS ABOUT STATE FARM'S MOTIVES, "CULTURE," AND CREDIBILITY REQUIRE DISQUALIFICATION.

The Court's gratuitous and derogatory comments must be read together. *See Miller*, 2007 OK 58 ¶¶ 19-20 (considering "entire record" and course of proceedings). The record here includes repeated statements assigning improper motives to State Farm and its attorneys unsupported by anything in the evidentiary record before the Court.

Before the 10/26 hearing, the Court said it was State Farm's strategy to delay discovery. It faulted State Farm for exercising its right to review. It said State Farm's filings opposing the Attorney General's motion to intervene—which the Court granted before the Oklahoma Supreme Court unanimously issued a writ of prohibition barring enforcement of the Order—were intended to distract the Court. It said State Farm's reasons for timing of discovery had "no credibility." At the 9/1 hearing on State Farm's motion to quash its CEO's deposition, the Court referred to an internal email from an entirely different motion and concluded one word was "overwhelming evidence" of State Farm's "culture." It said its views rested on its experience with "every State Farm case" involving counsel before it—a reference to a single case in which the Court attempted to adjudicate the merits without jurisdiction. And it impugned the CEO's candor, saying he worded

his sworn declaration "very intentionally" to avoid "perjury." On 9/29—before the issue was even briefed—the Court commented, without evidence, that State Farm's inadvertent production of privileged information in the SEO Memo could not be inadvertent because State Farm had a "gargantuan and ever-growing team of lawyers," and even commented on the evidentiary value of the document. And at the 10/1 hearing, the Court, again without briefing, declared that inadvertent production of the document was "nonsensical" because State Farm had "640, magic unnamed lawyers" who reviewed the document. The Court's comments against State Farm culminated at the 10/26 hearing when Judge Palumbo—on the record—analogized State Farm's executives seeking attorney advice to kidnappers who told their attorneys they had zip-ties, chloroform-soaked towels, ropes and duct tape in a safe house to further a criminal enterprise, upon which the attorneys advised them to use different words because it sounded like a kidnapping. And then, on 10/28, following State Farm's oral Rule 15 motion at the 10/26 hearing—which the Court denied—the Court issued an email ruling denying, without oral argument, all of State Farm's motions that were set for hearing on 10/26. The Court also granted Plaintiffs' wholly unsupported motion to compel State Farm to reproduce 110,000 documents ***within seven days***, and ordered State Farm to immediately produce to Plaintiffs an unredacted version of the privileged SEO Memo and cover email despite State Farm's stated intention to seek review. The ESI ruling is particularly troubling in light of the Court's prior acknowledgment that "I don't even know what metadata is . . . I wouldn't know it if it hit me in the face," and the Court's statement that as a result, the Court would not rule on the ESI issue "until after we have our hearing after [State Farm] file[s] a response." (Ex. 7, 10/1/2026 Tr., 29:17–22, 30:5-12.) That hearing never occurred in light of the Rule 15 motion.

Oklahoma law asks whether the totality of those circumstances would cause a reasonable

observer to question the Court's impartiality. *Bowen v. State ex rel. Okla. Real Est. Appraiser Bd.*, 2011 OK 86, ¶¶ 21, 23, 270 P.3d 133, 139 (holding that where "the totality of the circumstances gives an appearance of impropriety," disciplinary proceedings must be reversed); *Arbuckle Simpson Aquifer Prot. Fed'n Of Okla., Inc. v. Okla. Water Res. Bd.*, 2013 OK 29, ¶¶ 9–13, 343 P.3d 1266, 1270–71 ("When circumstances and conditions surrounding litigation are of such a nature that they might cast doubt and question as to the impartiality of any judgment the trial judge may pronounce, said judge should certify his disqualification.") (quotation omitted).

The distinction between criticizing conduct and ascribing motive is central. A court that finds a party missed a deadline or failed to support a burden objection is doing what courts must do, and State Farm does not seek disqualification on that basis. This Court has gone much further. It has repeatedly announced ***why*** State Farm acts as it does: that State Farm has issued a "clear directive" to "do nothing as long as possible"; that it misses deadlines "because that is what works for us"; that it prioritizes withholding potentially damaging documents ("kosher first") rather than complying with court orders; that a single word in an email is "overwhelming evidence" of State Farm's "culture;" that its CEO worded a sworn declaration to avoid "perjury" and "criminal prosecution;" and that its executives and attorneys are akin to criminals with zip-ties and chloroform-soaked towels attempting to invent euphemisms to conceal crimes. Each of these statements assigns an improper purpose to State Farm without evidence. A reasonable observer could understand the Court's statements about State Farm's motives and credibility as reflecting a settled view that State Farm's litigation positions are strategic, evasive, and unworthy of belief.

The question is not whether the Court subjectively believes it can remain fair. The Court told the parties at the 8/4 hearing that it was not impartial after attributing to State Farm a strategy of filing motions and blowing deadlines "because that is what works for us." (Ex. 3, 8/4/2026 Tr.,

26:19–27:5.) But under Rule 2.11(A), the question is whether this cumulative record would cause a reasonable observer to question the Court's impartiality. That record, replete with the Court's gratuitous, derogatory, and unsupported comments about State Farm's and its counsel's motives, certainly raises this question.

A. The Court's Categorical Assessment of Disputed Issues—Before Briefing and the Presentation of Evidence—Puts Partiality Into Question.

The Court may not use its beliefs about, prior experience with, or personal opinion of a litigant to decide a motion. For example, in *C.R.B. v. State*, the trial court determined a juvenile criminal defendant would be tried as an adult because the Court had given the defendant "a chance before . . . and it didn't work." *See* 1978 OK CR 22, ¶¶ 3–5, 575 P.2d 636, 637. The trial court opined that while the defendant could present rebuttal testimony, "it's going to have to be awful strong" due to the court's prior experience with the defendant. *Id.* The appellate court reversed and remanded, holding that the trial court's subsequent denial of a motion to disqualify was an abuse of discretion and that the court was to vacate its order certifying the juvenile to stand trial as an adult and "certify his own disqualification from the rehearing." *Id.* ¶ 5, 575 P.2d at 638.

Here, at the 9/1 hearing, the Court called a single email "overwhelming evidence" of State Farm's culture before any witness explained it and expressly rested that view on the Court's impression from "every State Farm case" before it. (Ex. 4, 9/1/2026 Tr., 40:12–16.) The Court then used that generalized assessment, drawn across cases, to judge a disputed issue and the intent of State Farm's CEO, who had not testified. Likewise, at the 9/29 and 10/1 hearings, before the privilege dispute regarding the SEO Memo was briefed, the Court speculated that State Farm's production of the privileged content was not inadvertent based on its perception that State Farm had many attorneys on the matter. (*See* Ex. 5, 9/29/2026 Tr., 11:17–12:3; Ex. 7, 10/1/2026 Tr., 26:1–11.) And at the 10/26 hearing, Court analogized State Farm's executives and CEO to

criminals with zip-ties and chloroform based entirely on its review of a single, privileged document in which an executive asked in-house counsel for advice regarding the wording of a memorandum. (*See* Ex. 11, Attorney Declarations.) These statements—as in *C.R.B.*—convey a preconceived assessment of and hostility toward State Farm as a recurring litigant and an unsupported view of its corporate culture. The Court's repeated pronouncements of this type give a reasonable observer grounds to question whether the Court has and will decide disputes impartially and through the evidence developed in the case in question. As in *C.R.B.*, these statements suggest a predetermined result and require disqualification. *See C.R.B.*, 1978 OK CR 22, ¶¶ 3–5, 575 P.2d 636, 637.

B. The Court's Prior Remarks Confirm Its October 26 Remarks Are Not Isolated.

The Court's comments in prior proceedings reinforce the appearance that the October 26 remarks reflect an established view. In February, the Court attributed to State Farm a "clear directive" to do nothing for as long as possible. (Ex. 2, 2/5/2026 Tr., 33:12–19.) But State Farm had promptly requested an emergency stay and the earliest available hearing date, and the Court acknowledged that March was the first date its staff provided and that the hearing moved only after Plaintiffs filed an expedited request. (*Id.* at 26:1–17, 32:23–33:21.) The Court nevertheless faulted State Farm for not filing a writ or seeking a stay sooner. The Court then suggested State Farm was improperly using the Supreme Court "in some type of like a discovery master-esque role." (*Id.* at 33:22–34:3.) A reasonable observer could understand those comments as treating State Farm's proper use of civil procedure as evidence of obstruction.

In August, the Court stated that State Farm's reasons for not being able to complete its document production had "no credibility" and characterized State Farm's approach as blowing deadlines because that "works for us," claiming "no one at State Farm" was taking its Orders seriously. (Ex. 3, 8/4/2026 Tr., 15:6–14, 26:19–27:5; 28:15–20.) Those comments assigned motives and a method of operation to State Farm. In early September, the Court claimed that a

single email was "overwhelming evidence" of State Farm's "culture" and accused State Farm's CEO of wording his declaration to avoid "perjury" and "criminal prosecution." (Ex. 4, 9/1/2026 Tr., 40:2–25) In late September, the Court speculated that State Farm was prioritizing a "kosher first" production (*i.e.*, ensuring that it did not produce damaging documents) over compliance with the Court's orders. (*See* Ex. 5, 9/29/2026 Tr., 11:17–12:3.) It remarked it was "tired" of hearing State Farm object to Plaintiffs' discovery requests as "overbroad" (though State Farm had not done so at the hearing) and then later suggested, in early October, that State Farm's production of privileged portions of the SEO Memo—a document which, at best, raises factual issues but which the Court prejudged and characterized negatively—was not inadvertent. (*See* Ex. 7, 10/1/2026 Tr., 26:1–11.) The 10/26 statements comparing State Farm's executives and in-house counsel to violent kidnappers are merely the latest examples of the Court's aspersions on State Farm.

C. The Court's Repeated Findings About State Farm's Motives and Credibility Could Cause a Reasonable Observer to Question the Court's Partiality.

The Court's speculative determination regarding State Farm's credibility and intent also reasonably puts the Court's impartiality in question. In *Miller*, the Oklahoma Supreme Court held that the trial court's refusal to disqualify was an abuse of discretion when the court had made statements suggesting "elevated tension" between the trial judge and the litigant, including where the court, on the record, concluded that the litigant "concocted" a "story" about an alleged telephone conversation. *See* 2007 OK 58, ¶ 20 & n.17, 163 P.3d at 555–56 & n.17; *see also Alley,* 882 S.W.2d at 822 (requiring disqualification where "trial court's comments indicate that the judge has prejudged factual issues"); *Haines,* 975 F.2d at 97–99.

The Court has repeatedly attributed bad intent to State Farm's executives and its counsel. For example, at the 9/1 hearing, the Court declared that State Farm's CEO intended to word his declaration to avoid "perjury," proclaiming the wording of Mr. Farney's declaration "was not

haphazard" and "was very intentionally done." (*See* Ex. 4, 9/1/2026 Tr., 40:19–21.) At the time of these unsupported statements about Mr. Farney's "intent," Mr. Farney had not testified in this action. The motion record included his written declaration but no examination concerning his understanding or use of the words used in or preparation of that declaration. (*See* Ex. 4, 9/1/2026 Tr., 40:19–24.) The Court simply adopted Plaintiffs' ***attorney argument*** about what the declaration "meant." Likewise, at the 10/26 hearing, the Court—without hearing from either the executive (Scott Welsh) or the in-house attorneys (Tim Marron and Mark Cavanaugh)—concluded that Mr. Welsh was attempting to hide criminal activity and that Mr. Marron and Mr. Cavanaugh helped him do it. This is precisely the sort of prejudgment of facts the Oklahoma Supreme Court found requires disqualification in *Miller*.[8]

D. The Court's Actions After the Rule 15 Challenge Reinforce the Appearance of Impartiality.

The Court's actions after State Farm raised disqualification reinforce State Farm's concern.

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[8] Notably, the Court's handling of the 10/1 metadata request provides another example of the Court accepting accusations against State Farm before facts were developed or State Farm even had an opportunity to respond. As noted above, the Court admitted that the Court "wouldn't know if it hit me in the face"; and that the Court would need to have additional briefing on any metadata issues (Ex. 7, 10/1/2026 Tr., 29:17–22; 30:5–12)—but then signed a Minute Order drafted by Plaintiffs' counsel (and not given to State Farm's counsel before the Court signed it) stating that the "Court was presented with ***evidence***" that State Farm had produced "no metadata." (Ex. 6, 10/1/2026 Minute Order at 1 (emphasis added).) And then, on 10/28—***after*** State Farm made its oral Rule 15 motion and without any oral argument—the Court granted Plaintiffs' Motion and ordered State Farm to ***reproduce 110,000 documents within seven days***. Likewise, the 10/1 Minute Order found that the Court was "presented with ***evidence*** of . . . no privilege log" ***despite that at the hearing Plaintiffs' counsel—after first claiming falsely that State Farm failed to provide a log—eventually conceded State Farm had in fact produced one.*** (Ex. 6, 10/1/2026 Minute Order at 1; Ex. 7, 10/1/2026 Tr., 24:11–20.) State Farm does not seek disqualification on the basis of the Court's rulings, which ordinarily do not establish disqualifying bias. *See Liteky*, 510 U.S. at 555. Indeed, although this Court has ruled against State Farm on every single discovery issue to date, State Farm has never before sought disqualification based on any of those rulings. *See also Bryan v. State*, 1997 OK CR 15, ¶ 30, 935 P.2d 338, 355–56 (trial judge's criticism of counsel and effort to expedite trial did not show bias directed at a party).

After State Farm orally challenged the Court's impartiality on 10/26, the Court initially stayed further proceedings. Less than two days later, on 10/28, the Court vacated the temporary stay and decided the remaining contested motions by email, without a hearing, and directed immediate production of the unredacted SEO Memo, ostensibly because the Court did not know whether State Farm was going to file a written disqualification motion (although Rule 15 allows ten days to file following denial of an *in camera* recusal request). The Court explained—in language taken straight out of a plaintiff's playbook—that *Hursh* had become the "actual tip of the spear" and that the outcome of this trial would "likely affect the hundreds of other similar cases and plaintiffs across Oklahoma." (*See* Ex. 11, Attorney Declarations.) Those statements confirm that the Court views this individual roof claim as a vehicle for resolving issues extending across State Farm litigation in Oklahoma. That broader view makes the Court's repeated statements about State Farm's institutional motives and "culture" especially consequential. The Court's description of *Hursh* as the "actual tip of the spear" makes its statements about State Farm's motives and culture especially troubling because the Court believes that its rulings here will affect hundreds of other claims against State Farm.

E. At a Minimum, the Cumulative Record Creates the Appearance of Prejudgment, and Disqualification Is Required for That Reason Alone.

At a minimum, the record creates the appearance of prejudgment, requiring disqualification. Whatever the Court intended in making the statements at issue, a reasonable observer could conclude that the Court has already formed a fixed view of State Farm's motives. Disqualification is therefore required to prevent the appearance of impartiality. *See Miller*, 2007 OK 58, ¶ 16, 163 P.3d at 553 ("In disqualification proceedings the courts must be sensitive to the appearances of possible impropriety as well as to the actual occurrences."); *id.* ¶ 17 ("Justice must satisfy the appearance of justice, even though this stringent rule may sometimes bar trial by judges who have no actual bias."); *id.* ¶ 20 ("[E]rror, if any, should be made in favor of disqualification.").

This case has drawn substantial public attention. Plaintiffs' counsel have repeatedly used the Court's rulings as validating their allegations against State Farm.[9] Given that the Court's statements about State Farm have been, and will continue to be, subject to intense public scrutiny, there should be no suggestion that the Court has predetermined any issue based on speculation about State Farm's "culture" or the intent of its executives or counsel. Regardless of the Court's motivations, preserving the appearance of propriety requires disqualification.

CONCLUSION

WHEREFORE, State Farm requests that the Court disqualify itself from this proceeding and that the case be transferred to another judge in this district.

Respectfully submitted,

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[9] *See, e.g.*, Insurance News Net, *State Farm CEO ordered to answer questions in Broken Arrow couple's roof claim case* (Sept. 3, 2026), available at https://insurancenewsnet.com/oarticle/state-farm-ceo-ordered-to-answer-questions-in-broken-arrow-couples-roof-claim-case (last accessed Sept. 25, 2026); *see also* https://tulsaworld.com/news/state-regional/crime-courts/article_b447f8a8-1213-44ee-afff-c355e03bc885.html (reprinting story in Tulsa World); Fox 25 News, *OK judge rules State Farm CEO can be questioned under oath about practices* (Aug. 17, 2026), available at https://okcfox.com/news/local/ok-judge-rules-state-farm-ceo-can-be-questioned-under-oath-about-practices (last accessed Sept. 25, 2026); KFOR News, *State Farm asks judge to toss out request for CEO's deposition* (Sept. 1, 2026), video available at https://kfor.com/news/local/state-farm-asks-judge-to-toss-out-request-for-ceos-deposition/ (last accessed Sept. 25, 2026).

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CERTIFICATE OF MAILING

I do hereby certify that on October 29, 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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EXHIBIT 1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

BILLY & LACY HURSH,	)	
	)	
PLAINTIFFS,	)	
	)	CASE NO. CJ-2025-2626
v.	)	
	)	
STATE FARM FIRE AND	)	
CASUALTY COMPANY;	)	
MARK D. WELTY;	)	
AND MARK D. WELTY	)	
INSURANCE AGENCY, INC.,	)	
	)	
DEFENDANTS.	)	

* * * * * * * *

TRANSCRIPT OF PROCEEDINGS

HAD ON DECEMBER 30, 2025

BEFORE THE HONORABLE AMY PALUMBO,

DISTRICT JUDGE

* * * * * * * * *

COPY

REPORTED BY:

Amber Hubbart, CSR #2060
Official Court Reporter
Oklahoma County Courthouse
321 Park Avenue, Suite 123
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FOR THE OFFICE OF THE ATTORNEY GENERAL:

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Chris Campbell
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(The following transpired in open court:)

THE COURT: So good morning. We are present on the record on Case Number CJ-2025-2626, Billy Hursh and Lacy Hursh, Plaintiffs, versus State Farm Fire and Casualty Company and Mark D. Welty, and Mark D. Welty Insurance Agency Inc., Defendants.

Counsel, please make your appearances for purposes of the record.

MR. CAPPS: Cameron Capps and Chris Campbell on behalf of the State of Oklahoma.

THE COURT: Thank you.

MR. SONNE: Blake Sonne, Whitten Burrage, on behalf of the plaintiffs.

MR. WHITTEN: Reggie Whitten on behalf of the plaintiffs.

MS. WHITTEN: Hannah Whitten on behalf of the plaintiffs.

MR. DELIGANS: Ryan Deligans, Durbin Larimore and Bialick on behalf of the Hursh family.

THE COURT: Thank you.

MR. LEFFEL: Lance Leffel and David Herber on behalf of the defense.

THE COURT: All right. Welcome. And also allowing to be present by purposes of speakerphone today is Mike Burrage. So we are here today -- I've had an

THE COURT: Okay.

MR. SONNE: -- from our perspective.

THE REPORTER: Oh, can I get the name? Sorry. He forgot to announce.

THE COURT: Blake, S-O-N-N-E.

THE REPORTER: Okay.

MR. SONNE: Oh, I apologize.

THE COURT: Okay. Thank you. I do appreciate that. And I think I know the answer to this. But kind of in anticipation, based off of reading what State Farm has filed -- there, in fact, at this point in time, is no type of a contractual agreement between your firm and the Attorney General's office in any way, shape, or form, correct, as far as it pertains to moving forward in this litigation as a whole; correct?

MR. SONNE: Correct.

THE COURT: Okay. I just failed to see how what State Farm filed, that you asked me to review and consider, is anything other than irrelevant and disparaging material. I do not think that there is anything that is applicable to what's -- in what State Farm has filed in response to the attorney general's motion to intervene and the attachments that were filed thereto that matches what we have here today. In the event that there is some type of a contractual agreement or retainer agreement or something in

some fashion that the Court is supposed to at some point weigh whether it is fair, I'll do that. That's not before me right now. And given everything that has been filed, and now that I am satisfied that the Hurshes do not object to the intervention of the attorney general, and I take what you say very seriously when, on page six, the last paragraph of your motion to intervene, you state the attorney general is willing to be bound by the terms of any existing protective order or by such modified or supplemental protective order as the Court may deem necessary to safeguard confidential information while still allowing the State to perform its public interest and law enforcement functions and will seek leave of the Court to use that confidential information in connection with other litigation. I take that seriously. And I know that you would not have put that in writing as an officer of the Court if you did not intend for your office to abide by that. Is that accurate?

MR. CAPPS: That's accurate, yes.

THE COURT: Okay. I understand what State Farm wanted me to, I think, for lack of a better term, get distracted by, but I do not find it to be relevant. I do not find it to be on-point. I do think that having given significant thought and reflection, that the law does allow the attorney general to intervene under Title 12 of the

Oklahoma Statutes, Section 2024A, in conjunction with the AG's authority under Title 74 of the Oklahoma Statutes, Section 18bA3, as well as Title 12 of the Oklahoma Statutes, Section 2004B1. And I take you at your word that you will not utilize this as some type of attempt to commandeer this litigation or in any way infringe upon the original plaintiffs' ability to pursue their claims. I do not think that I require any further questions or any further explanation. You all have submitted everything in writing very well.

Mr. Leffel, if there's something else that you would like me to consider, I'll allow you to do that.

MR. LEFFEL: Your Honor, based on your comments, we respectfully disagree. I mean, this presents an important constitutional question on whether the attorney general; number one, has the right at his will to intervene in private litigation and whether the constitutional powers that are allocated to the attorney general allow him to enforce the business of insurance. And I will explain why we included some of the comments that were made by this same attorney general in our briefing. Because he was commenting on a situation that involved the same law firm where there was private litigation between policy holders and their insurance company, Farmers, where he sought to intervene, and described that as an abuse of the office. And we

EXHIBIT 2

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

MOONG SIAN WONG-FAUST, and STEPHEN FAUST, Plaintiffs, vs. STATE FARM FIRE AND CASUALTY COMPANY; GRANT GINGERICH; and GRANT GINGERICH INSURANCE AGENCY, INC., Defendants.	)	CASE NO. CJ-2025-1675
BILLY & LACY HURSH, Plaintiffs, vs. STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and MARK D. WELTY INSURANCE AGENCY, INC., Defendants.	)	CASE NO. CJ-2025-2626

* * * * * *

TRANSCRIPT OF **CONTINUATION OF PROCEEDINGS FROM JANUARY 29TH, 2026 -** PROCEEDINGS

HAD ON THE **5TH** DAY

OF **FEBRUARY, 2026,** BEFORE

THE HONORABLE AMY PALUMBO

* * * * * *

ATTORNEY'S COPY

Reported by:

Tara Nixon, RPR, CRR, CRC
321 Park Avenue
Oklahoma County Courthouse
Oklahoma City, Oklahoma 73102

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(Whereupon, the following transpired at 1:34 p.m.)

THE COURT: Good afternoon. We are present on the record on case numbers CJ-2025-1675 and CJ-2025-2626. This is Faust vs. State Farm and Gingerich and Hursh vs. State Farm and Welty.

Counsel can you please make your appearances for the record?

MR. R. WHITTEN: Reggie Whitten for the Plaintiff.

MR. BURRAGE: Mike Burrage for Plaintiff.

MR. SONNE: Blake Sonne, Whitten Burrage, on behalf of Plaintiffs.

MS. H. WHITTEN: Hannah Whitten on behalf of the Plaintiffs.

MR. DELIGANS: Ryan Deligans, Durbin Larimore, on behalf of the Plaintiffs.

MR. CAMPBELL: Christopher Campbell on behalf of the Attorney General.

THE COURT: Thank you.

MR. LEFFEL: Lance Leffel on behalf of Defendants.

MR. HERBER: David Herber on behalf of Defendants.

THE COURT: Okay. Thank you. And welcome all,

MR. LEFFEL: -- we also moved for a stay. How can you get a stay without asking? I mentioned this the other day, and I'm not trying to be critical, we did, we tried. You know, we don't ask for special treatment, Your Honor. We try to follow the rules.

And so we call over here and let you know that we have an emergency request for stay, not you personally, but to your staff, and said, what's the first available hearing date you got? We got the March date. It wasn't until after Whitten Burrage filed something that it got moved up. And I told you, I didn't object. This is getting this process going faster. That's fine. I'm fine with that, but we asked for it, and we asked for the earliest possible hearing date. So I take issue with this argument that we somehow delayed. We did file it and we did immediately ask for the Stay.

As to the motion to consolidate, I just want to point out, the last round of cases were consolidated in front of Judge Timmons, and we only moved to consolidate after Whitten Burrage moved to consolidate three cases in front of Judge Dishman, and our objection to that was that, not that consolidation might not make sense, it doesn't make sense for three cases when there are, at minimum,

expedition, et cetera, et cetera, I would have loved to have, and would have certainly carved out the opportunity to have had live witnesses to come in and demonstrate for me exactly how this is not possible.

What they have done for you, Mr. Leffel, is wait until, from my perspective, based on the way that things have been filed, is wait until they got an unfavorable ruling and then set in motion a series of let's delay and let's put together a -- I mean, I have boxes of documents in my office, and so far I've got maybe two or three pages of documents of something that can't be cross-examined, that says we just can't do this. There's just no way. There's just no way, take our word for it. And the issue that I have is, while I have not seen them, these documents exist, they have been turned over before, assertions have been made that it's simply a matter of re-Bates stamping them. And I just find it very wild that they have put you in a position where you are having to sit here and attempt to explain why that just can't be done. Maybe, who knows, I don't know what this -- and I understand that you had called my office and that March was the first date that you were given, and quite honestly, until I saw

the expedited request that was filed by Plaintiff, and then it got put on my radar, instead of sitting in my pile for March, and then I became aware, well, gosh, none of the orders that I had issued have been abided by.

I don't think that the Supreme Court is going to say, you know what, not one page of what is requested, not one hour of testimony of what's been requested, nothing is relevant, meets or qualifies the six-part balancing test that we've discussed, I just don't think that.

So State Farm's clear directive to you to do nothing as long as possible and leave you in a position where, again, you're here by yourself, and I'm left to wonder what Ms. Manduca is doing that's just so critically important is not fair to you, and it's not fair to anybody sitting in this courtroom, it's not fair to this Court, it's a waste of my time because you haven't filed the writ. You could have filed a writ earlier. You could have asked for a stay earlier.

I understand that you were waiting for a decision, but when I see things like assertions made by a former Federal Court judge that in five years he's had to appear on 40 writs and only lost one,

and maybe the Supreme Court is being utilized in some type of like a discovery master-esque role, it's just very disheartening.

I would really like to know when Ms. Manduca can be here, there, wherever you all are going to figure this out, sooner than April. And I would really like to know how quickly we can reasonably get any of the things that the Court ordered in November, literally any of 'em. I mean, the --

Let me ask you this. In your worst case scenario, if the Supreme Court feels that they agree with what I had ordered in November and you do have to turn over, not you personally, your clients have to turn over everything that I have found relevant, is it all already Bates stamped, is it ready to go so that that way it can efficiently, for the best judicious use of time for everybody, including the Hurshes, including the Fausts, including everyone who in this county and others is waiting, is it ready to roll?

MR. LEFFEL: So, Your Honor, again, I'm not directly involved in the searching the company's, you know, bowels for these documents. I can tell you that I do know that the relevant search criterias are being circulated, without getting too

EXHIBIT 3

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

BILLY & LACY HURSH, Plaintiffs, vs. STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and MARK D. WELTY INSURANCE AGENCY, INC., Defendants.	)	CASE NO. CJ-2025-2626

* * * * * *

TRANSCRIPT OF **COURT'S CONTINUATION AND RENDERING OF FINAL ORDER RE: PLAINTIFFS' MOTION TO ENFORCE AND STATE FARM'S MOTION TO EXTEND SCHEDULING ORDER DEADLINES** PROCEEDINGS

HAD ON THE **4TH** DAY

OF **AUGUST, 2026,** BEFORE

THE HONORABLE AMY PALUMBO

* * * * * *

ATTORNEY'S COPY

Reported by:

Tara Nixon, RPR, CRR, CRC
321 Park Avenue
Oklahoma County Courthouse
Oklahoma City, Oklahoma 73102

(Whereupon, the following transpired at 10:13 a.m.)

THE COURT: Good morning. We are present on the record in case number CJ-2025-2626, Billy and Lacy Hursh vs. State Farm, et al. Counsel please make your appearances for the record.

MR. SONNE: Blake Sonne, Whitten Burrage, on behalf of the Plaintiffs.

MS. H. WHITTEN: Hannah Whitten, Whitten Burrage, on behalf of the Plaintiffs.

MR. DELIGANS: Ryan Deligans, Durbin, Larimore & Bialick, on behalf of the Plaintiffs.

MR. LEFFEL: Lance Leffel on behalf of the Defendants.

MR. HERBER: David Herber on behalf of Defendants.

THE COURT: We are here today for the Court to address a continuation and rendering of final order in regards to Plaintiffs' Motion to Enforce that we began last week, as well as State Farm's Motion to Extend Scheduling Order Deadlines.

Before we do that, I have done quite a bit of light reading in the last week, and I would like to go ahead and give you some frameworks, insight, as to how I am going to be viewing this case thus

2025 that was memorialized in writing November 25th, 2025. Motion to Reconsider is denied. Motion to Stay is denied. Previously ordered production from November 25th, 2025, is to be produced in seven days from today. That was in reference to the *Nida* production. The *Nida* production that has magically been able to be produced to other judges in other cases but cannot for reasons that at this point have no credibility with this Court be produced here, when this Court is the one that originally dealt with *Nida*. This Court is the one that originally months ago, before the Hursh case, let State Farm know this is something that is relevant and needs to be turned over.

Further, the rest of the production, meaning everything not *Nida* related, remains due within 120 days from the November 25th, 2025 hearing.

State Farm is to produce Nicole Manduca; Kathy Ress; Thomas Moss; Wensley Herbert, and Scott Welsh in depositions, on days and locations agreed upon, to take place within 30 days.

State Farm to designate witnesses for the corporate rep notice in 30 days.

State Farm has argued to me that all they have done is exercised their rights to appeal. State

August 4th. So, I mean, the strategy works.

MR LEFFEL: The date for Kathy is September 3rd, which is now less than 30 days away.

MR. SONNE: Again, the strategy works if not providing us days in July when we asked. But we would like to have some direction from the Court to agree on a reasonable time. I think we asked for 15 to 20 days to have these depositions set that we can agree upon with the Court availability via Zoom, or because we've agreed from Day One we'd go anywhere to take their deposition, which I think these two are in Bloomington.

THE COURT: Here's the issue that I have. The issue that I have is that if this was important to State Farm you would have had somebody marking and watching, because you would have known that the expectations of this Court, as previously stated ad nauseam, were don't wait until we get word from the Supreme Court and then think this whole thing starts from scratch. Get your ducks in a row so you can comply.

MR LEFFEL: May I?

THE COURT: Yes.

MR LEFFEL: So that's why the record reflects that before they even filed this Motion to Enforce

within seven days the first production flew, and the only way that they were able to do that was because they did prepare for that contingency, and that first production was over 150,000 pages. We've seen four more productions made since then that have totaled oven 250,000 pages of production.

THE COURT: Are those 250,000 pages of production produced in such a way that they are in compliance with the statute or are they just a magic dump?

MR. LEFFEL: They're describing them with the documents, but again, with hundreds and hundreds of thousands of pages of documents, specifically on the interrogatory requests that need to be supplemented, there is the place where we need to enlist, you know, say what we're using as responsive to that interrogatory. But again, like, the timing of trying to get it out.

And you understand the *West* production end up coming out earlier in time. It defies logic that they're not trying to completely comply with your order. They've done it in *West*, now they've moved to your case, and they're in the process of completing that production. They completed it in *West*, these Plaintiffs' lawyers already have it over

listed by name, and I understand that maybe one of them is retired and is in South America, who knows, whatever, arguably one of the least important of that group, those individuals, that's six, six or seven people should have either had their depositions taken or already be scheduled or should be providing this Court with documentation showing that they can't comply because they're donating a kidney, they have suffered some type of great personal harm, loss, whatever. Working for this same company, who is a defendant in this case, who has been ordered to comply, who has failed to comply, doesn't constitute an acceptable excuse.

"I don't have" the essential equivalent of notes for the teacher, okay, of why I can't comply. I don't have a stack of we would love to be here to comply with your court orders but we have to comply first with these other 50 court orders. The soonest we can do it is X. Is that acceptable? What it is, is kick this can down the road, we'll just let it go, we'll file motions, we'll have the briefing schedule, we'll get it set, we'll just blow deadlines because that is what works for us.

And I say that not because I am not capable of being fair and impartial, I say that because it is

an observation based on the evidence that State Farm has sent you in here with. The arguments set forth by lawyers are just that, they're arguments. Here's the evidence that I got today, five blank pieces of paper.

MR. LEFFEL: Out of hundreds and hundreds of thousands of pages of production.

THE COURT: That happened to a lot of stuff that are not in compliance with what the law requires.

MS. H. WHITTEN: And, Judge --

MR. LEFFEL: Dates have been offered on every single one of those witness ranging from 8/27 through 9/16 for all of those witnesses, except for Mr. Moss, who is unavailable because of, you know, he's retired and he's out of the country.

So, again, I understand there's a disagreement on what those dates that were offered, but to say that we just are like flouting this Court's orders when we're making production seven days within the writ being denied and offering dates for every single one of the witnesses and they just aren't acceptable to the Plaintiffs, that's not... that's the record.

THE COURT: What of those witnesses have been deposed within 30 days from the date that writ came

down?

MS. H. WHITTEN: None.

THE COURT: And of those witnesses what dates were settled and agreed upon within 30 days of the date that that writ came down?

MS. H. WHITTEN: One.

MR LEFFEL: I suspect --

THE COURT: Right.

MR LEFFEL: -- within 30 days of that writ coming down we did offer dates for most of those, and I know the final dates came in, I think, before we were over here on the first hearing on the motion to enforce. So I don't know that -- I haven't done the calculation but --

THE COURT: And that's the problem, no one at State Farm is doing the calculations, because no one at State Farm is taking the orders of this Court seriously. I recall, from what I was presented with in writing, that the answer to both of those questions is in the negative.

MR. SONNE: Your Honor, at the last hearing I pointed out for the Court, the writ was denied on June 23rd. On Friday, July 24th, we got one date for Kathy Ress, for her to be deposed on September 3rd, that's a fact. We had the hearing

EXHIBIT 4

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

BILLY & LACY HURSH, PLAINTIFFS, V. STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; AND MARK D. WELTY INSURANCE AGENCY, INC., DEFENDANTS.	)	CASE NO. CJ-2025-2626

* * * * *

TRANSCRIPT OF PROCEEDINGS

HELD SEPTEMBER 1, 2026

BEFORE THE HONORABLE AMY PALUMBO

DISTRICT JUDGE

WITHIN AND FOR OKLAHOMA COUNTY

OKLAHOMA CITY, OKLAHOMA

* * * * *

Reported By:
Annie Mueller
Court Reporter
Oklahoma County Courthouse
321 Park Avenue, Room 811
Oklahoma City, Oklahoma 73102

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PROCEEDINGS

THE COURT: Good afternoon. We are present on the record in Case No. CJ-2025-2626, Hursh v. State Farm.

Counsel, please make your appearances for the record.

MS. WHITTEN: Hannah Whitten for the plaintiffs.

MR. SONNE: Blake Sonne for the plaintiffs.

MR. BURRAGE: Michael Burrage, plaintiffs.

MR. DELIGANS: Ryan Deligans is with the plaintiffs.

MR. WHITTEN: Reggie Whitten, plaintiffs.

MR. SANDERS: John Sanders for the plaintiffs.

THE COURT: Thank you.

MR. LEFFEL: Lance Leffel for the defendants.

MR. HERBER: David Herber for defendants.

THE COURT: All right. Thank you.

All right. First, a few announcements before we get underway. I have received multiple requests from media to have allowance to view anything actually in the courtroom with cameras. That is something that I have never given consideration to prior -- as everybody knows, I presided over a criminal felony docket and there were serious and significant, in my opinion, safety concerns that might need to be addressed. And so I never granted that in any capacity.

Our Local Court Rule 39.1 breaks that down in great

agree to resubmit those filings in accordance with this Court's rules so that we may comply. That was option number one.

Furthermore, the parties are willing to -- to proceed with excusing these irregularities.

THE COURT: Let's proceed with option two.

MR. LEFFEL: Okay.

THE COURT: Let's go.

All right. Thank you, counsel. I appreciate the clarity that you approached that with.

First up, let's take up our motion to quash and motion for protective order regarding State Farm's CEO, Jon Farney.

Whenever you're ready.

MR. LEFFEL: Thank you, Your Honor.

THE COURT: Thank you.

MR. LEFFEL: Court reporter, are you ready?

COURT REPORTER: (Nodding head.)

MR. LEFFEL: Okay.

There are two undisputed facts that are relevant to this motion which militate in favor of quashing the deposition of State Farm's CEO, Jon Farney.

First, Mr. Farney's deposition was recently ordered in *West v. State Farm*, a case pending in Lawton involving the same Plaintiffs' counsel on the same issues for which

his deposition is sought here. The order in *West*, Your Honor, allows for a limited deposition, limited time to four hours, and limited to his personal knowledge of FME and the fixed profit task force.

Second, Mr. Farney has no personal knowledge of the *Hursh* claim and was not involved in any way in its handling. The plaintiffs do not contest that fact and concede it because they must. These facts are undisputed, and these facts raise the question of why. Why would Plaintiffs need a second deposition of Mr. Farney, given the fact that he has no personal knowledge that is particular to the facts of this case or that would differ from the information sought in the *West* deposition?

Section 3226(C)(1) of the Oklahoma Discovery Code is clear that the Court is in power to enter any order that justice requires to protect a party or person from annoyance, harassment, embarrassment, and oppression, including that the requested discovery not be had. On these facts, that is precisely the relief that State Farm requests from this Court.

John Farney has no relevant information about the plaintiffs' claims. So far in this case, State Farm has produced over 110,000 documents. Of the 110,000 documents, Plaintiffs have identified three emails with Mr. Farney, two that he received and one that he sent. The only email from

Mr. Farney is to change the agenda of a single meeting of the fixed profit task force to discuss claims; not wind hail claims, not homeowners' claims, just claims in general. Nothing about that in this email is related to Plaintiffs' allegations and claims is what State Farm does in a gazillion different ways.

Neither the email he received has anything to do with Oklahoma, with wind hail claims, or the Fire Model Enhancement initiative that up until now, Plaintiffs contested was the scheme at issue. They were not ours.

The first is a summary of high-level financial results that were sent to Mr. Farney and 16 other individuals. The second is an agent complaint that was immediately delegated to lower level of employees addressed.

I would liken this agent complaint to an upset citizen copying the governor of Oklahoma on a complaint email, which more than likely would be addressed by his staff. And the fact that the chief executive of the State is copied on an email does not establish his involvement in the underlying facts or issues. He has no control over that.

Judge Sheperd, Your Honor, in the *West* case down in Lawton addressing the same issue, requires the plaintiffs to first depose lower-level executives, and gave State Farm the opportunity to renew its motion to quash after that

occurred.

While Judge Sheperd denied the motion to quash the deposition entirely, he granted State Farm's motion for protective order in part. Judge Sheperd required that *West* Plaintiff to first complete the depositions of other State Farm executives before taking Mr. Farney.

Judge Sheperd limited Mr. Farney's deposition to four hours and require that the plaintiffs take the deposition at Mr. Farney's place of business.

Judge Sheperd also provided State Farm with the opportunity to renew that motion after those other depositions, and he reasoned as follows: Should the deposition of Ms. Manduca and other ordered State Farm executive-level witnesses demonstrate that those witnesses can -- can and do supply the information Plaintiffs seek from Mr. Farney, State Farm may renew its motion on a developed record.

Now, that happened last week in Bloomington, Illinois. While the folks in this room were spending time in lovely Bloomington, Illinois -- which where it was about 20 degrees cooler, so it was the one thing we had going for us, if we ever got outside. One of those was the highest ranking members of the claims department, Wensley Herbert.

And Mr. Herbert confirmed that Mr. Farney has no relevant information or testimony to offer. In prior

depositions of Ms. Manduca, six-hour deposition, two questions were asked about Mr. Farney. "Was he involved in the FME?"

The answer was, "No."

And, "How do you spell his name?"

Actually, let -- let me restate that.

"Who was higher ranking than Wensley Herbert?"

Answer was, "Mr. Farney."

And, "How do you spell his name?"

Six-hour deposition. That's what Ms. Manduca had to say. She's now provided this Court with a declaration confirming that Mr. Farney was not involved and didn't contend to being at the FME hearing.

Mr. Herbert, who was deposed last week, testified Mr. Farney was not involved with directing any claims program during the relevant time period of 2019 to '26.

[redacted] Given this information, State Farm has now had the right to renew its motion to quash in *West*.

And Jon Farney, they attached a declaration. The only piece of evidence to justify the burden they have is a one-page declaration, one and a half. And it says, quote, "It is my understanding the plaintiffs in this case are seeking testimony about the FME. I don't want to answer it. I was not directly involved in the FME."

I mean, you can't make that up. What does that

mean? Well, clearly, he was indirectly involved. He was the CFO. And then he says, "I actually received updates and recording that included information concerning quality initiatives and enterprise-wide trends." He is a fact witness, and he's now leading this company in 2024, the very year that Billy and Lacy Hursh have closed without payment denial of a full roof replacement.

Thank you, Your Honor.

THE COURT: Okay. All right.

One thing that -- that -- so I honed in immediately on the direct or other knowledge because the absence of the evidence is sometimes just as important as the evidence.

Also, in my preparation and Exhibit 19, I've got, "What is this," when looking at our other motions, the motion to strike and redesignate. And here is what I see from Eric Bailey, "Looks fantastic. Thank you for all the work on this. One suggestion in the monitor and measure area, and can we change 'reduce' to 'target?' I fully understand the meaning, but I think the lawyers would caution us on how others might use the terms of the contents."

That is overwhelming evidence of the culture in this company, layer upon layer. And I'm saying that based off of what my experience has been with every State Farm case that you have appeared on in front of me. It is like a piece of baklava, layer upon layer upon layer upon layer of making sure that State Farm is airtight and insulated.

I think that wording was not haphazard. I think that wording on that affidavit was very intentionally done because I do not think that Mr. Farney wants to potentially commit perjury and possibly open himself up through criminal prosecution for doing so or contempt of court.

EXHIBIT 5

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

BILLY & LACY HURSH,

Plaintiffs

vs. No. CJ-2025-2626

STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and MARK D. WELTY INSURANCE AGENCY, INC.,

Defendants.

HEARING ON WHETHER DEPONENT CAN TESTIFY TO PLAINTIFFS' EXHIBIT 133
Before Honorable Judge Amy Palumbo
On September 29, 2026, beginning at 2:49 p.m.
In Oklahoma City, Oklahoma

APPEARANCES:

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(Appearances continued on next page)

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Videographer: Kaleb Pianalto

Reported By: Becky Dame Steinkamp, CSR, RPR

We're going to take a look at it. We're going to reserve our rights to call it back and claw it back to the extent that it is privileged."

We've had a chance to examine the document. We sent a letter in West, the same counsel that are in this room, letting them know that we did need to claw back this document. We were going to make appropriate redactions to make it consistent across the production, because, again, there were multiple iterations because not every version is exactly the same. That's why multiple versions were produced with different redaction treatment.

And I'm sorry if I'm losing you with some of the very specific details here, but long story short --

THE COURT: Well, it's not that. What it is, is, it appears, adding more people isn't helping things. Like, what I'm hearing consistently is: Mr. Leffel comes in and tells me to the best of his ability what's going on, and that there's this gargantuan and ever-growing team of lawyers and helpers and companies and corporations and multi tiers of people reviewing and redacting and making sure that everything is kosher first, and then, in

compliance with the order of the Court second, and then, third, turning it over way beyond typically the order of this Court.

And so it shocks me that there are five different versions of this document. I now am waiting on two missing pages of this document. It seems to be that there's a communication problem -- because Mr. Leffel can't be in all places at once, but he's who is here on this case with me, and it's very disappointing and very frustrating that we cannot have everything squared away so that this time would be super fruitful.

I don't know where the magic missing two pages of what I asked for are either.

MR. LEFFEL: So I know that there was a supplemental email sent to Charles yesterday with a cover page --

MS. ZOLNER: Your bailiff.

MR. LEFFEL: -- which would have been, I think, 158701.

When I looked through the -- and I don't have both the documents, Your Honor, so I just need to see what --

THE COURT: Do you want to see them?

MR. LEFFEL: Sure, what's missing.

it that Whitten and Burrage was able to get a new version of 133 that was different than -- was it because State Farm provided it to you?

MS. WHITTEN: No. I'm happy to address that, but as a preliminary matter, Judge, I think it's important for the record that, basically, every time we're in front of you, I hear the word "overbroad" about their production orders.

THE COURT: Yeah. I'm kind of tired of that.

MS. WHITTEN: I'm not saying that to be disrespectful --

MS. ZOLNER: I didn't say that. I just said we produced a lot of documents. Just for the record, I didn't say anything other than we've produced a lot of documents and I'm trying to clean up any issues.

MS. WHITTEN: We do have a court reporter, and I did write "overboard" when she was arguing about your production.

But, regardless of that, your order has been affirmed by the Oklahoma Supreme Court, and it is what it is. I don't think the parties can stand here today and excuse what is going on based on your production order.

EXHIBIT 6

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

_____	_____
Petitioner(s)	Attorney(s) for Petitioner
--vs.	Case No. _____
_____	_____
Respondent(s)	Attorney(s) for Respondent

COURT MINUTE

Date: _____ Judge _____

Hearing On: _____

Ruling By Court:

EXHIBIT 7

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

BILLY & LACY HURSH,

Plaintiffs

vs. No. CJ-2025-2626

STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and MARK D. WELTY INSURANCE AGENCY, INC.,

Defendants.

PRETRIAL RECORD
REGARDING DISCOVERY, WITNESSES, AND MEDIA
BY HONORABLE JUDGE AMY PALUMBO
On October 1, 2026, beginning at 11:32 a.m.
In Oklahoma City, Oklahoma

APPEARANCES:

Appearing on behalf of the PLAINTIFFS

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(Appearances continued on next page)

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(Appearances continued on next page)

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Also present: Walter Haskins (via Zoom)
Mark Romano (via Zoom)

Videographer: Kaleb Pianalto

Reported By: Becky Dame Steinkamp, CSR, RPR

PROCEEDINGS

THE COURT: Good afternoon. We are present on the record in Case Number CJ-25-2626, Hursh versus State Farm, et al.

Counsel, please make your appearances for the record.

MS. WHITTEN: Hannah Whitten for the plaintiffs.

MR. WHITTEN: Reggie Whitten for the plaintiff.

MR. WHITE: Joe White for the plaintiff.

MR. DELIGANS: Ryan Deligans for the plaintiff.

MR. SONNE: Blake Sonne for the plaintiff.

MR. LEFFEL: Lance Leffel for the defendants.

MS. ZOLNER: Erica Zolner for the defendants.

MS. POWERS: Tiffany Powers for the defendants.

THE COURT: Thank you.

All right. We are here today in the courtroom assigned to myself, Judge Palumbo, at the determination that several depositions of defense witnesses necessitated actually taking place here in

is we are hearing State Farm's positions in briefs and in arguments before the Court, and then we see the data and we just uncover and uncover and uncover it, and it's misleading after misleading after misleading after misleading, and that's the problem.

And so when we're talking about this document, which I presented to Mr. Herbert in Bloomington, Illinois, that did exactly what Mr. Whitten said and shows, and now there's five versions of it, they've not produced the metadata -- and the original document was redacted. So Ms. Whitten's point, there's never been a privilege log produced.

MR. LEFFEL: That's actually inaccurate. We produced a privilege log that was over 200 pages last month.

MS. WHITTEN: It's incomplete and deficient. I just went through this yesterday.

MR. LEFFEL: Your testimony was that no privilege log has been provided.

MS. WHITTEN: None of the attorney-client redactions on Exhibit 133 is in there at all. It came late. None of the redactions of Exhibit 133 pending in front of the Court are listed on that. I have redactions that are not on that privilege log.

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They didn't send it to me over email. We got in a hard copy mail and we got it a couple weeks ago. It is the most inefficient privilege log I've ever seen in my life. And so I am requesting a new privilege log that actually governs the attorney-client privilege that you redacted on Exhibit 133.

And if I may, Your Honor, if we were doing white box redactions on our production without producing a privilege log to State Farm, I would bet you that they would be sitting here in front of you, Your Honor, asking for sanctions against us, because I have no ability to determine what has been redacted. Is the entire page redacted? Are there multiple paragraphs redacted? It's just a blank page designated "Confidential."

MR. LEFFEL: The argument has now changed from, oh, we did provide a privilege log. They just believe it's insufficient, and now we're getting into speculation what we would or would not do if the shoe was on the other foot. This is not an appropriate subject of argument here, Your Honor.

MS. WHITTEN: It is not speculation to say that you would not object to having no privilege log if we were redacting voluminous documents and had no ability to challenge that privilege.

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THE COURT: All right. Here's the situation. It's very clear, not only what the authority requires, what the orders of this Court have been. All parties shall comply. Not when it's convenience, not after 640 magic, unnamed lawyers have looked at it and then they accidentally give stuff, and then it doesn't go well and then they ask for it back. Get it together and make sure that this case is labeled a priority. Because this is nonsensical and unnecessary and is going to come to a screeching halt. If that landing place is sanctions, there are severe ones that are available to this Court. I went into great detail about some of those things in prior hearings, and I will not hesitate to apply them if I feel they are warranted.

There are only so many times that we can have this discussion. We've had it ad nauseam, because it's not getting fixed. So do whatever needs to be done to fix this.

Is there anything else?

MS. WHITTEN: Your Honor, just because this is such an important hearing, I did prepare a minute order --

THE COURT: Thank you.

MS. WHITTEN: -- and I just want to make

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sure that it's reflective of your order here today.

THE COURT: All right. Here's what it says. "Discovery witness is immediate. Discovery continues to be an issue. This Court ordered full and flawless compliance with production. The Court has been presented with evidence of white box redactions, no metadata, no privilege log, and others. On media, parties to submit briefs 10 pages or less about positions in the media -- I'm going to add within 40 days."

MS. WHITTEN: I apologize.

THE COURT: That's okay.

"One potential possibility from the Court to allow for a full jury to all sides is the Court puts media guardrails on now and then allows media potentially at trial. Parties to meet and confer in person on these issues prior to submission of briefs to determine what they agree on. This Court expects witnesses to appear live. This Court orders that Nicole Manduca must testify as a corporate representative in a non-evasive manner, and the length of the deposition may extend beyond six hours, as needed, per this Court."

MS. WHITTEN: Thank you, Your Honor.

THE COURT: Thank you all. All right.

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MR. WHITTEN: Your Honor, may I request that State Farm tell you, my suggestion would be by close of business today, number one, when they will get the metadata version of the document you're looking at in camera. And, number two, when will they get us the metadata version of all the other documents. It should have already been given to us. Because they did not -- we defined our request in our discovery. They just didn't follow it. And they should. And -- say that again?

MS. WHITTEN: We're going to supplement a list to the Court. The Court has requested we supplement a list of the documents outside of 133.

MR. WHITTEN: We just need a timeframe, because if we leave here today, I feel it will be the same. The check will be in the mail maybe one of these days. We just need a time.

THE COURT: Maybe a nice way to solve this is just set hearings that are show cause hearings to actually require State Farm to present to this Court viable credible evidence as to why they are unable to comply with the orders of this Court. Maybe that's a step before visiting sanctions.

These are not things I want to do. I love this case. I love all the lawyers involved. You

all know this. But this is not how the law expects cases to proceed. And the fact that State Farm has many cases across the nation and is just spread really thin, allegedly, at this point in the proceeds, when we're ten weeks out from trial, it doesn't work for me.

Because I'm also under the impression, unless something's changed, that many -- that there are literally hundreds of other cases across this state with my colleagues that are essentially on ice waiting the determination of what happens here, which means there's a lot of Oklahomans who are in a holding pattern until this can be determined. So it is of paramount importance. And unless somebody gets on the stand and convinces me otherwise, that is where we're heading.

So as to your request, Mr. Whitten, I've got to be honest, I don't even know what metadata is. Okay? I'm like the least tech savvy person on earth. Okay? I don't know anything about it, I don't know -- I wouldn't know if it hit me in the face. I don't know what I'm looking for, so I don't know if I'm even going to have to have you get me something or some example or some Metadata for Dummies to even show me. I don't know. I don't

know if it will look the same. I don't know what I'm looking for. I don't know if it's going to be apparent.

So all that to say, I do understand the frustration. Now that you know I don't know anything about metadata, if you think that it's prudent to put something together in a succinct way that's going to brief me on this issue, please feel free to do it. And I'm going to defer that metadata issue and ordering the production of that electronic metadata, whatever, 14/133, until after we have our hearing after you filed a response. Okay?

As it pertains to all the other things in the list forthcoming, that's going to have a real quick turnaround time, because as far as I'm concerned, every single thing is already late.

MR. WHITTEN: Thank you, Your Honor.

THE COURT: All right. Thanks, guys. With that, enjoy your lunch. My staff actually left so you can have free rein, whatever you want.

(PROCEEDINGS CONCLUDED AT 12:09 P.M.)

CERTIFICATE

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Becky Dame Steinkamp, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the above and foregoing proceedings were by me taken in shorthand and thereafter transcribed; that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of October, 2026.

Becky Dame Steinkamp, CSR, RPR

EXHIBIT 8

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

BILLY & LACY HURSH,

Plaintiffs

vs. No. CJ-2025-2626

STATE FARM FIRE AND CASUALTY COMPANY; MARK D. WELTY; and MARK D. WELTY INSURANCE AGENCY, INC.,

Defendants.

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

APPEARANCES:

Appearing on behalf of the PLAINTIFFS

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Reggie N. Whitten
Blake Sonne
Michael Burrage
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(Appearances continued on next page)

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(Appearances continued on next page)

CONTINUED APPEARANCES:

Appearing on behalf of the DEFENDANTS AND THE WITNESS

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Also present: Walter Haskins (via Zoom)
Mark Romano (via Zoom)

Videographer: Kaleb Pianalto

Reported By: Becky Dame Steinkamp, CSR, RPR

PROCEEDINGS

THE COURT: Thank you, folks. Please be seated.

All right, guys. What can I do for you?

MS. WHITTEN: Hi, Your Honor.

THE COURT: Hello.

MS. WHITTEN: I hate to bother you, but I just want to give you an example of one of the issues we're facing here today, Your Honor. This is Exhibit 15, and I'm reading from the page that is shown in front of you. There's a second chart on this page that [redacted], and I asked the witness, "Does this State Farm chart, [redacted] I'm simply asking her if this chart says what it says in plain English, "yes" or "no," and I cannot get a "yes" or "no." I've objected to responsiveness several times.

I told the witness that her attorney is entitled to cross her -- or redirect her, which is exactly what happened Tuesday, and ask for an explanation of her answer, but I'm entitled to ask a

corporate representative "yes" or "no," does this document say what it says, and all I'm getting are explanations and long answers that are not a "yes" or "no."

So I'm looking for guidance because this has been 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. And they're coached to repeat back and forth [redacted]

And so I'm hoping the Court can provide us guidance on our ability to ask a corporate representative a "yes" or "no" question and get a "yes" or "no" answer.

THE COURT: Okay. And just for clarity, we've got a corporate representative deposition taking place here today?

MS. WHITTEN: Yes, Your Honor.

THE COURT: And we did on Tuesday, as well?

MS. WHITTEN: Yes, Your Honor.

THE COURT: Okay. And the corporate representative today is who?

MS. WHITTEN: Nicole Manduca. She is designated for all the Fire Model Enhancement topics. [redacted]

THE COURT: Thank you.

Your response, sir?

MR. LEFFEL: I do. May I start by asking Ms. Dame to repeat the last question and answer from the record?

MS. WHITTEN: Would you actually read the last two? Because I objected to responsiveness twice, so the Court can hear the trouble we're having about getting these answers.

Sorry, Becky. I know this is a court reporter's nightmare.

(Whereupon, reporter read back the previous two questions and answers, as follow:)

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

Q Ms. Manduca, I'm going to object to responsiveness. This is a "yes" or "no" question. Your counsel will redirect you at the end of this deposition, and he can ask you whatever he wants to, and you'll have plenty of time to elaborate on that, but right now, this is my deposition, and I only have six hours to ask you.

So looking at 16354, [redacted]

MR. LEFFEL: Objection.

THE WITNESS: [redacted]

(End of readback)

MR. LEFFEL: With that, Your Honor, I would direct the Court to some authorities on this issue, which is part of why we asked for a protocol in these cases.

I cite to the Court State Farm Mutual Auto versus Daughtry. It is a Northern District of Oklahoma case from 2006. And that Court advocates -- the Court specifically said -- the Court emphasized that "There is no rule requiring a

deponent to restrict answers to one-word responses and that deposing counsel cannot misrepresent the rules to force a particular answer to form."

I would also cite to the Court Alexander versus FBI, a 1998 case out of the District of DC, where the key holding was that a witness cannot be compelled to submit a different answer to a question simply because plaintiffs were hoping to receive a different answer or unable or unwilling to find an answer to the question elsewhere in the deposition.

MR. WHITE: I want to say one thing here, Judge.

THE COURT: Yes, sir.

MR. WHITE: Part of the purpose of discovery in doing these depositions is trying to streamline the presentation of evidence to a jury, and you -- you are allowed as an advocate to ask State Farm, this corporate representative, a "yes" or "no" question as to documents that they produced, so we know that they will agree, and we get to tell the jury "State Farm will tell you this."

You can't do that with these -- with these answers that she's getting. This -- this kind of is a culmination of this morning where Ms. Whitten has to "I respectfully object to your response. It's a

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'yes' or 'no' question."

And this is be exactly what we've been listening to through the morning when this witness is asked a very appropriate structured "yes" or "no" question that will allow us to be able to frame issues for the jury in a manner that we know we can hold them accountable for because we have the "yes" or "no" answer, and they're refusing to do that.

And I believe under the Discovery Code, she is asking a very appropriate and proper question, and they're being combative, with all due respect to my colleague -- the witness -- not my colleague, but the witness is being combative on answering the question appropriately, and we're asking for the Court's help, the Court's guidance, that they should be directed to answer the question "yes" or "no." It's a --

MR. LEFFEL: Your Honor --

MR. WHITE: -- straightforward question.

MR. LEFFEL: Sorry about that, Joe.

Yeah, I mean, they tell you of no authority that says that a witness is not allowed to use their own words to provide context to their answers, and I have cited specific authority to this Court that says that it's inappropriate to say, "You

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have to answer this question with one word."

I mean, we saw this in the last deposition of Ms. Manduca in West where it was suggested that, you know, counsel was giving her the answer. Just repeat my answer back to you. That's not the purpose of a deposition. She's allowed to provide context. The authority says that it is inappropriate to tell a witness that they have to use one-word answers.

She's trying to answer the question to the best of her ability. There's been numerous instances today when the question was merely, "Is that what the document says?" where she says, "Yes, I see where that's -- where that's written there."

I think that this question was framed a little differently, and she's providing her context and her understanding of the document which is what she's supposed to do as a corporate representative.

MR. DELIGANS: May I address counsel's statement on not providing you authority?

THE COURT: Sure.

MR. DELIGANS: Again, I don't have a tie on today. I want to apologize for not having a tie.

THE COURT: That's fine.

MR. DELIGANS: But the spirit behind the

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Oklahoma Discovery Code, specifically 3237A.3., is that witnesses don't get to provide evasive answers. And I think that Ms. Becky read you back an evasive answer, and that's what Ms. Whitten is asking this Court for, is to stop the evasiveness.

She can rattle on all kinds of stuff, but she doesn't get to do that in a witness chair in front of our jury. And the Courts needs -- I feel like the request is the Court describe guidance that you don't get to be evasive here, just like you're not going to be evasive in front of the jury. We get to hold you accountable for yeses and nos and to provide a complete answer if that is what they believe she needs to do. That's the purpose of redirect.

Ms. Whitten had to ask three times. And what does that do? That cuts into our time. Because we're trying to comply with the Oklahoma Discovery Code. And every time she has to rerepeat a question because of an evasive answer, it only cuts into time. It frustrates the discovery process, and that should not be tolerated by this Court or any Court.

And so, with all due respect to my friend, Lance and counsel, 3237A.3. does not permit these

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evasive answers. And I would suggest that that is the authority this Court can rely upon to direct this witness to stop being evasive and start being direct. Direct questions, direct answers that are true. That's all we're asking for.

MR. LEFFEL: I didn't hear it --

MS. WHITTEN: Your Honor --

MR. LEFFEL: I'm sorry.

MS. WHITTEN: -- Mr. Leffel is aware of the law that Mr. Deligans relies on because, when we produce our plaintiffs in depositions, we get asked "yes" or "no" questions, and they object to responsiveness. Where is the law that they're now relying on that the witness doesn't have to answer a "yes" or "no" questions? We've engaged in countless depositions of our plaintiffs, and it is ridiculous for State Farm to take the position here today that a lawyer is not entitled to ask a "yes" or "no" question and get a "yes" or "no" answer.

MR. LEFFEL: I didn't hear it, Your Honor, that segment that was read, but what I remember Ms. Manduca saying was, "I don't agree that that's what the document says." I mean, that is a way of saying "yes" or "no" in her own words.

And, again, the case law says you can't

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tell the witness that you can only answer -- you can only give a one-word answer. I mean, you're allowed to provide context. And the remedy is to ask a follow-up question, ask your question in a different way.

MR. DELIGANS: But, actually, Judge, the Discovery Code says the remedy is that it's treated as a failure to answer. It's a failure to answer because my friend Blake said I was right on the law. It's a failure to answer. And we would like instructions to our jury and admonishment to the witness and instruction to the jury that anything that her failing to answer is deemed to be against -- just like if you failed to answer a Request for Admission, it's deemed admitted.

And, Judge, I just think today -- I'm not trying to get emotional, but I think it would help if you provided this witness and this team over here guidance of what you expect answers to be, and that we have complied with the Discovery Code. And that section specifically says, "an evasive or incomplete answer is to be treated as a failure to answer."

Did I read that right, Blake?

MR. SONNE: You did.

MR. DELIGANS: Okay. Sorry. That's for

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the record.

THE COURT: Anything further?

MR. LEFFEL: No, Your Honor.

THE COURT: Okay. I just have a couple questions.

So, again, who all -- I've got lawyers in my courtroom who I don't know. I've got folks in my courtroom who I do not recognize. So who all do I have here? I've got three State Farm lawyers? Lance, you, and you two ladies?

MS. ZOLNER: That's right.

MR. LEFFEL: Ms. Zolner and Ms. Powers.

MS. POWERS: Yes, Your Honor.

THE COURT: Okay. And then --

THE VIDEOGRAPHER: I'm just the videographer.

THE COURT: You're the tech guy. Okay.

I'm just curious. Just for a little bit of background knowledge, do we consider this witness a professional witness?

MR. LEFFEL: I don't know what that means. I mean, she's an employee of State Farm who's been designated as a corporate representative.

MS. WHITTEN: And she's been a previous corporate representative for State Farm.

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THE COURT: Okay. How many times -- just so that I have an idea of what exactly the breadth and the depth it is that I'm dealing with here, how many times has your witness been deposed in her life? Dozens? Hundreds?

MR. LEFFEL: You can answer. I can't answer for you.

THE COURT: Have you lost count?

THE WITNESS: Six times.

THE COURT: Six times. How many times have you testified in trial?

THE WITNESS: Never.

THE COURT: All right.

It is the opinion of this 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.

Your objection is going to be sustained. The witness will answer the question. The whole purpose of the ability of your counsel to follow up and flush out whatever you would like, I'm not going to curtail that.

It appears that, while things have been real quiet on the other side of this wall, things

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have perhaps not gone as well as I had hoped. So to that effect, the Court's opinion is that there is definitely good cause shown for grounds for this deposition to not be limited to six hours. And I'm not excited about having any extra time take place in some other state. So that's -- my position has been very clear. Just because something is discoverable does not necessarily mean it's going to be admissible.

And I have been doing a lot of thinking about preparation for this trial, and we're actually going to make a totally separate record on that, and I'd like to do that right now, so let's shift gears.

(HEARING CONCLUDED AT 11:32 A.M.)

CERTIFICATE

STATE OF OKLAHOMA)
) SS:
COUNTY OF OKLAHOMA)

I, Becky Dame Steinkamp, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the above and foregoing hearing was by me taken in shorthand and thereafter transcribed; that I am not an attorney for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 7th day of October, 2026.

Becky Dame Steinkamp, CSR, RPR

EXHIBIT 9

From: Scarborough, Charles <Charles.Scarborough@oscn.net>
Sent: Wednesday, October 28, 2026 12:03 PM
To: Lance Leffel <lleffel@gablelaw.com>; David R. Herber <dherber@gablelaw.com>; hwhitten@whittenburragelaw.com; mburrage@whittenburragelaw.com
Subject: FW: CJ-25-2626: Hursh v. State Farm

External email – beware of links and attachments

Please see below:

From: Palumbo, Amy <Amy.Palumbo@oscn.net>
Sent: Wednesday, October 28, 2026 11:56 AM
To: Scarborough, Charles <Charles.Scarborough@oscn.net>; Pusztai, Kincso <Kincso.Pusztai@oscn.net>
Subject: CJ-25-2626: Hursh v. State Farm

Please forward to all Counsel. Thank you. AP

Upon further review of Rule 15 Disqualification, Rules for District Courts, Title 12 O.S. §15(a) addresses the procedural requirements, and states specifically "until such time as a formal motion is filed, the assigned judge may proceed with the case." No such motion has been filed, and defense indicated they would like to have time to discuss with their client how they wished to proceed. The Court has received no indication whether State Farm's discussion will actually produce anything further, and to delay this trial indefinitely causes prejudice to the Plaintiffs.

At closing of defense's argument in support of *Defendant State Farm Fire and Casualty's Application of Attorney-Client Privilege and Work Product Protections to HUR00158701-19*, defense indicated that should the Court rule unfavorably, defendant was already prepared to file an appeal and/or writ to a higher Court, and would ask for a stay pending said review.

The Court retired to give thorough consideration to the arguments, written briefs and materials of all, and once again closely examine Exhibit 133. Upon announcing the Court's decision that State Farm's *Application* would be denied on multiple grounds, the record will reflect that defense then proceeded to inquire as to whether this Court could be fair to State Farm, discussed how State Farm had routinely lost motions in front of the Court, and noted that while it had never been addressed

with the Court, State Farm had been discussing this for a while.

For clarification, unredacted Exhibit 133 is a part of this record, and it is proper to provide to Plaintiffs, as the Court rendered its judgment and denied the defense's request for a stay, and had been in the process of moving on to address the remaining four motions that were set, *before* defense sua sponte inquired as to the Court's ability to be fair and impartial. State Farm is ordered to provide Exhibit 133 in its unredacted form immediately to Plaintiff, and provide an additional courtesy copy of same to this Court.

The Court's initial granting of a temporary stay to this sua sponte is an interlocutory decision, and as no written motion has been filed, with the impending jury trial and other critical depositions scheduled, to give fair and impartial treatment to all parties, justice is best served by vacating the temporary stay, and revisiting only if the procedural threshold as described in Rule 15(a) is met. This is especially true as the Court learned in argument that Judge Shepherd in Comanche County had continued the *West* jury trial, making this Court's jury trial in *Hursh* the actual tip of the spear, and outcome of this trial will likely affect the hundreds of other similar cases and plaintiffs across Oklahoma.

The Court also renders rulings per 4(h) on the following Motion that was also set on October 26, 2026 as follows: *Defendant State Farm Fire and Casualty Company's Motion to Reconsider and Stay the Court's October 1, 2026 Order* is denied, and the Court specifically takes Judicial Notice that upon review of the video deposition of Corporate Representative Witness Nicole Manduca, in the *West* case, Judge Shepherd found per his Court Order dated October 16, 2026 that the witness was completely evasive and no-responsive to the majority of counsel's questions during the deposition. Further, counsel's conduct during the deposition did not rise to the level necessitating a deposition protocol. Judge Shepherd vacated/recalled the entry of a Protective Order and Deposition Protocol.

Additionally, State Farm failed to fully illuminate that during the depositions that took place in Oklahoma County, when called to provide guidance at various times that entire week, this Court recognized the importance of Ms. Manduca's information and testimony, it found good cause for State Farm to also have additional time as defense felt it needed to clarify, explain, or flesh out any answers the witness gave during Plaintiff's examination, and/or further conduct deposition of Ms. Manduca. When taken in context with the totality of the Court's decision, it is clear that *both* parties are able to extend the deposition of Ms. Manduca as necessary, so long as it is fruitful. This aligns with the clear and repeated expectations of this Court, to avoid delays, and allow for discovery to be completed as quickly, and as thoroughly, as possible.

As to the remaining motions set for hearing October 26, 2026, the Court has given consideration to the authority, evidence, and argument of all written submissions, and finds per Rule 4(h) as follows: *Defendant State Farm Fire and Casualty Company's Motion to Partially Reconsider the Court's September 28, 2026, Order on Plaintiff's Motion to De-Designate* is hereby denied. *Defendant State Farm Fire and Casualty Company's Emergency Motion to Strike Plaintiff's Supplement to Plaintiff's Motion to Compel Re-Production of Electronically Stored Information in the Form Defendant State Farm Elected* is hereby denied. *Plaintiff's Motion to Compel Re-Production of Electronically Stored Information in the Form Defendant State Farm Elected* is hereby granted, and production is ordered

within seven (7) days.

Prevailing party shall prepare, circulate, and present Orders memorializing this Court's rulings above for the Court's signature within ten (10) days.

Thank you.

AMY PALUMBO
DISTRICT JUDGE
Seventh Judicial District of the State of Oklahoma
Oklahoma County Courthouse
321 Park Avenue, Room 809 • Oklahoma City, OK 73102
☎ (405) 713-1147 ✉ Amy.Palumbo@oscn.net

EXHIBIT 10

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
OKLAHOMA COUNTY, OKLAHOMA
October 5, 2026 4:43 PM
RICK WARREN, COURT CLERK
Case Number CJ-2025-2626

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

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

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

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

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

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

RELEVANT BACKGROUND

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

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

¶ 9. Cavanaugh responded to Welsh with an email conveying legal advice that he marked "PRIVILEGED AND CONFIDENTIAL[,] ATTORNEY CLIENT COMMUNICATION[,] ATTORNEY WORK PRODUCT." *See* HUR00158710; *id.* Welsh then forwarded the email from Cavanaugh back to himself, attaching the draft SEO Memo that contained the attorneys' comments reflecting legal advice. *See* HUR00158712-19l; *see also* Ex. 1, Welsh Dec. ¶¶ 7-9.

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

On October 22, 2021, Welsh asked State Farm's Law Department to provide legal advice concerning the draft SEO Memo. *See* Ex. 2, Cavanaugh Dec. ¶ 6; Ex. 1, Welsh Dec. ¶ 3. In light of litigation challenging State Farm's handling of wind and hail claims, Welsh asked counsel to evaluate the legal implications of language used in the draft to describe those practices. Ex. 2, Cavanaugh Dec. ¶ 7; Ex. 1, Welsh Dec. ¶¶ 5-6. The business personnel responsible for the SEO Memo remained responsible for the underlying practices and the SEO Memo's factual and business substance. Ex. 1, Welsh Dec. ¶¶ 4, 7-9. Cavanaugh and Marron responded in their capacities as attorneys through confidential emails and comments in the draft. Their comments applied legal judgment to language in the SEO Memo and conveyed counsel's resulting legal analysis and recommendations. *Id.*. ¶¶ 8-0; Ex. 2, Cavanaugh Dec. ¶¶ 8-9. They were shared only with State Farm employees responsible for requesting, receiving, or acting on that advice. The privilege

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

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

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

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

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

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

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

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

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

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

III. The Crime-Fraud Exception Does Not Apply

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. State Farm Took Reasonable Steps to Prevent Disclosure

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

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

C. State Farm Took Reasonable Steps to Rectify the Error

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

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

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

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

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

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

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

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

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

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

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

State Farm's notice of inadvertent disclosure, Plaintiffs filed a copy of HUR00158702-09 on the record, pasted portions of it within the body of their Notice, and marked it as an exhibit at Stewart's deposition on September 29, 2026.[5] Counsel's use of HUR00158702-09 was not for the allowed purpose of presenting the information under seal to the Court for a determination of the privilege claim. *See* 12 O.S. § 3226(B)(5)(b). Counsel's conduct plainly violates § 3226(B)(5)(b).

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

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

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

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

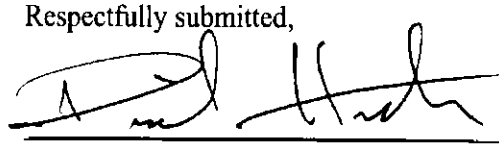
CONCLUSION

The Court should find that HUR00158701-19 contains information and communications protected by the attorney-client privilege and work product doctrine and that, pursuant to 12 O.S. § 2502(E), State Farm's inadvertent disclosure of privileged information and communications in the produced versions of HUR00158702-09 and HUR00158712-19 does not result in a waiver of State Farm's privilege claims. Accordingly, State Farm requests that the Court: (1) uphold the original redactions applied to HUR00158701 and HUR00158710-11; (2) uphold the corrected redactions applied to HUR00158702-09 and HUR00158712-19[6]; (3) strike Plaintiffs' Notice of Supplemental Authority and require Plaintiffs to refile it without references to the privileged information and communications; (4) strike both the portion of Wayne Stewart's September 29, 2026 deposition testimony regarding the privileged and the exhibit itself; and (5) order Plaintiffs and their counsel to return or destroy all copies of the documents produced at HUR00158702-09 and HUR00158712-19. Finally, to the extent the Court finds that any redacted portion of HUR00158701-19 is not privileged, State Farm requests a stay of any such ruling to allow State Farm a meaningful opportunity to consider and seek interlocutory review.

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

Respectfully submitted,



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State Farm Fire and Casualty Company

CERTIFICATE OF MAILING

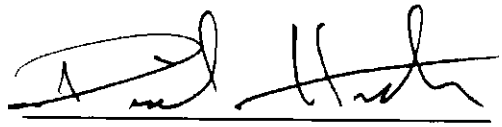
I do hereby certify that on October 5, 2026, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, to those parties as listed below:

Reggie N. Whitten
Michael Burrage
Blake Sonne
Hannah Whitten
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Attorneys for Plaintiffs



David R. Herber

EXHIBIT 1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF SCOTT WELSH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

October 5, 2026. Cedar City, Utah. *Scott Welsh*

(Date and Place) (Signature)

EXHIBIT 2

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF MARK CAVANAUGH

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

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

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

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

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

a. HUR00158701: This document is an email from Scott Welsh to Gregory E. Jones and Kathy Ress, copying Nicole Manduca and Tom Moss, sent October 26, 2021, with the subject line "SEO Fire Claims Service & Quality Update" with the following three attachments.

i. HUR00158702-HUR00158709: This document is a draft memorandum titled "P&C Fire Claims Roofs – Quality & Service; October 26, 2021" and was attached to HUR00158701.

ii. HUR00158710-HUR00158711: This document is an email thread attached to HUR00158701 from Scott Welsh to himself, dated October 26, 2021 with the subject line "Law Department Feedback." The first-in-time email in the thread is an email from State Farm in-house counsel Tim Marron to Scott Welsh, copying me, dated October 26, 2021, with the subject line "10.26.21 SEO Fire Claims Service & Quality Update." The second-in-time email in the thread is an email from Scott Welsh to Attorney Marron and me. The third-in-time email in the email thread is an email from me to Scott Welsh and Attorney Tim Marron, dated October 26, 2021, with the subject line "10.26.21 SEO Fire Claims Service & Quality Update."

iii. HUR00158712-HUR00158719: This document is a draft memorandum titled "P&C Fire Claims Roofs – Quality & Service; October 26, 2021" and was attached to the email Scott Welsh forwarded to himself at HUR00158710.

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

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

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

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

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

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

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

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

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

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

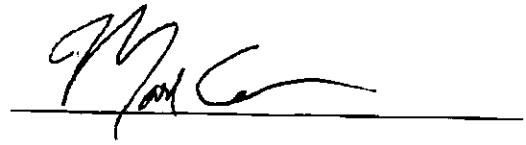
bracketed second sentence under the second heading on page HUR00158704; (4) the bracketed second sentence of the last paragraph on page HUR00158704: (5) the bracketed first full sentence appearing on page HUR00158705; (6) the bracketed material in the last sentence in the second paragraph of page HUR00158705;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

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

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

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

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



Mark Cavanaugh

EXHIBIT 3

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF LAURA SIFF

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

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

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

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

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

[redacted], processing, reviewing, and [redacted] Engagement"). State Farm [redacted] responsiveness and privilege for this [redacted] a team of contract attorneys to [redacted] documents and potential privilege. [redacted] review, implemented multiple layers of [redacted] which documents to produce or [redacted].

[redacted] measures used in this matter included [redacted] audit and consistency checks across [redacted] additional level of review before logging [redacted].

[redacted] documents in this case, in addition to [redacted] from prior cases that settled. [redacted] entitled HUR00158702-09 and [redacted] in July 2026 were produced at [redacted] Cnty. Ct., No. CJ-2025-135 [redacted].

[redacted], Newburyport, Massachusetts.

[redacted]

EXHIBIT 11A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF LANCE E. LEFFEL

I, Lance E. Leffel, hereby certify, under penalty of perjury, that the following is true and correct to the best of my knowledge and belief:

1. I am over the age of 21 years, of sound mind, legally capable of making this Declaration, and have personal knowledge of the facts contained in this Declaration.
2. I am a Shareholder with GableGotwals and am counsel of record for State Farm Fire & Casualty Co. ("State Farm") in the above referenced matter.
3. On October 26, 2026, I attended a hearing in the above-mentioned matter before Oklahoma County Judge Amy Palumbo.
4. To the best of my recollection, without the benefit of a hearing transcript, the following events occurred at that hearing.
5. Several Motions filed by the Parties in the matter were set to be heard at the hearing. The Court first considered State Farm's Motion and Brief in Support of Application of Attorney-Client Privilege and Work Product Protections to a document bates-labeled HUR00158701-9.

6. Before argument, the Court cleared the courtroom because of the confidential nature of the issues to be heard, leaving only court staff and approved counsel. After hearing arguments from both parties, the Court recessed to chambers.
7. While not meant to be a verbatim transcript of the Court's statements, and based on my recollection of the hearing, Judge Palumbo returned to the bench after a short recess, and in the course of issuing her ruling made comments that compared State Farm employees' request for advice from in-house counsel to criminals seeking advice about storing ropes, chloroform-soaked towels, and zip ties in a safe house to further a criminal enterprise. To the best of my recollection, the Court characterized the attorney's advice in her example as essentially suggesting that the conduct sounded like kidnapping but advising clients that it should be called something else.
8. The Court continued stating that, in its view, State Farm's in-house counsel had advised employees in furtherance of fraudulent and unlawful conduct. As I recall, the Court described the advice as changing a few words to "put icing (or frosting) on it so that the good times could keep rolling at State Farm."
9. I stood to seek clarification and address the Court's inflammatory comments. I stated that the Court had expressed opinions throughout the course of this case in various proceedings about State Farm's conduct and culture, culminating in a comparison of State Farm's conduct to criminal abductions. With the courtroom still closed, I made an in-camera request for recusal under Rule 15 of the Rules for District Court. I stated that the Court's comments raised good-faith concerns about the Court's impartiality and whether my client could receive a fair adjudication in her court.

10. After brief discussion, the Court and the parties agreed to adjourn so counsel could confer with their clients about next steps. The hearing was then adjourned.

11. As used in this declaration, quotation marks are not intended to signify a verbatim transcription of what the Court said. Quotations indicate the declarant's best recollection of what occurred at the hearing.

12. A court reporter was also present for the October 26, 2026, hearing, and should be able to provide a transcript with additional details concerning Judge Palumbo's statements and the events that occurred that day.

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

October 29, 2026
Oklahoma City, Oklahoma

(Date and Place)

Jamie E Laffel

(Signature)

EXHIBIT 11B

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF DAVID R. HERBER

I, David R. Herber, of lawful age, hereby declare:

1. I am Of Counsel with GableGotwals, our law firm represents State Farm Fire and Casualty Company ("State Farm"), Mark D. Welty, and Mark D. Welty Ins. Agency, Inc. in the above styled action (hereafter, the "Case"). I have entered my appearance and am counsel of record in the Case which is proceeding before Judge Amy Palumbo.

2. On Monday, August 26, 2026, I attended a hearing in the Case and took contemporaneous notes of the proceeding.

3. While several motions were set for hearing, only one matter was ultimately heard by Judge Palumbo. That matter was a brief filed by State Farm styled "Defendant State Farm Fie and Casualty Company's Brief in Support of Application of Attorney-Client Privilege and Work Product Protections to HUR00158701-19." The matter at issue was the inadvertent production of an internal memo that had been drafted with advice of counsel (hereafter the "SEO Memo"). The SEO Memo was a 19-page document that contained confidential and privileged attorney communications that State Farm inadvertently produced without redactions. State Farm sought to claw back the produced version of the SEO Memo and replace it with a fully redacted version.

4. Due to the privileged nature of the document at issue, the Court cleared the courtroom.

5. In the courtroom at the time of the hearing was Judge Palumbo, Judge Palumbo's clerk Charles Scarborough, the court reporter Tara Nixon; counsel for Plaintiffs: Mike Burrage, Hannah Whitten, and Brad Beskin; counsel for State Farm: Lance Leffel, William Farrior, and me. Several members of the press were present in the courtroom but were asked to leave before argument commenced.

6. The Court went on the record at or about 1:36 p.m. Lance E. Leffel, lead counsel for State Farm, commenced argument at or about 1:45 p.m. and proceeded to argue until approximately 2:06 p.m.

7. In summary, State Farm argued that the information contained in the SEO Memo was clearly attorney client information, but because certain legal comments been included in-line, State Farm's reviewers failed to notice it was privileged advice upon initial review. To that end, additional privileged advice had been redacted in this and other documents. Portions of the SEO Memo that did not contain privileged information had been left unredacted.

8. State Farm further argued that given the large amounts of documents that had been ordered produced, and given the short timeframe required to produce them, the information had been overlooked, notwithstanding the steps taken to protect the information. State Farm then argued that case law supports clawing back the document.

9. State Farm further argued that the document should not be subject to the crime-fraud exception to the attorney client privilege, as Plaintiffs had argued at prior hearing addressing different documents. State Farm argued that the crime-fraud exception only applies when a party seeks legal advice in furtherance of a crime. Here, State Farm was seeking legal advice to ensure

it complied with the law.

10. At approximately 2:06 p.m., Hannah Whitten, counsel for Plaintiffs Billy and Lacy Hursh, commenced her argument on behalf of Plaintiffs.

11. Ms. Whitten argued that State Farm had waived its right to claw back the document for a number of reasons, including: (1) failure to object to the use of the document in a deposition (when it was first presented and State Farm first became aware of its production) for nearly half an hour, (i.e. immediately following the first break in the deposition), (2) failure to send a letter seeking to claw back the document in that case for approximately four days (two of which were weekends), (3) failure to send the claw back letter in a separate, unrelated lawsuit (the Hursh case at issue) until approximately six days later.

12. Ms. Whitten further argued that just because a document contains attorney communications does not render the entire document privileged. She also argued that the document should not remain privileged because Plaintiffs have made allegations of fraud, and this document goes directly to supporting those allegations.

13. She then argued that the Court should deny State Farm's request for a stay in the event she determined the document should not be protected by the attorney client privilege.

14. That argument continued until approximately 2:36 p.m. when Mr. Leffel began his rebuttal argument. Mr. Leffel made clear that State Farm would be seeking a stay pending appellate review, should the Court rule State Farm's communications with its attorneys in the SEO Memo was not subject to the attorney client privilege. He further argued that the Court had not determined, nor been presented with evidence that a fraud had been committed.

15. Ms. Whitten commenced further argument at approximately 2:46 p.m. Upon the conclusion of Ms. Whitten's argument, the Court went into a brief recess at 2:50 p.m.

16. At or about 3:13 p.m. the Court returned from its recess to issue its ruling.

17. The Court began by observing the large number of lawyers that State Farm had obtained, were represented by, and had entered an appearance in the case. She determined that the time involved in sending a claw back letter impacted the ability to claw back the SEO Memo.

18. The Court then opined on the crime fraud exception.

19. She noted that the SEO Memo had initially been drafted without including the legal department.

20. The Court stated that the actions were akin to private parties gathering chloroform, zip ties, and other equipment to engage in kidnapping. And after consulting the lawyers, the lawyers determine they should call it something different.

21. She further opined that the lawyers here seemed to be doing the same thing: changing some words, putting icing on the cake, and deciding they should let the good times keep rolling.

22. Following the reference in which the Judge compared State Farm's lawyers to advising kidnappers, Mr. Leffel stood to address the Court.

23. Mr. Leffel commented that given the Court's views on his client, and the reference that their actions seemed akin to a violent kidnapping, he felt compelled to ask if the Court was capable of giving his client a fair trial.

24. He then asked that she recuse herself pursuant to Rule 15.

25. Ms. Whitten then argued that the request was made purely as a delay tactic, because her firm had agreed to delay a separate trial against State Farm.

26. Mr. Leffel then clarified that he had not planned to make such a request. But given the nature and history of the proceedings, he had begun to have doubts about the Court's ability to

view his client from an unbiased perspective. When the Court made comments comparing his client to kidnappers, he felt it gave him no choice but to make the request.

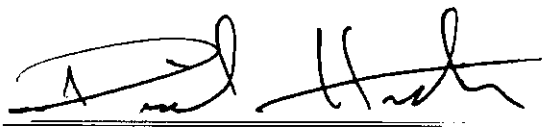
27. The Court attempted to explain her comments and stated that she felt she could be an unbiased judge in the Case.

28. She then commented that she felt "Judge Burrage" (in reference to opposing counsel Mike Burrage) could vouch for the fact that she had a prior case where she had thought she might struggle to be unbiased and presented that to his client.

29. Following that discussion, the Court determined that the remaining matters should be continued.

October 29, 2026
Oklahoma City, Oklahoma

(Date and Place)



(Signature)

EXHIBIT 11C

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

DECLARATION OF WILLIAM FARRIOR

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

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

2. I am a Senior Counsel with Redgrave LLP, where I focus on complex discovery and litigation matters. I am licensed to practice law in the State of Oklahoma, a member of the Oklahoma Bar Association, and my bar number is 22137.

3. I serve as discovery counsel for State Farm Fire & Casualty Co. ("State Farm"), including assisting in the above-referenced matter.

4. On October 26, 2026, I attended a hearing before Judge Amy Palumbo in the above-referenced matter.

5. To the best of my recollection, the following events occurred at that hearing.

6. Judge Palumbo considered State Farm's Brief in Support of Application of Attorney-Client Privilege and Work Product Protections to HUR00158701-19.

7. While not meant to be a verbatim transcript of her statements, and based on my recollection and notes from the hearing, Judge Palumbo said something to the effect that "it is

interesting that this is drafted by higher level people to send to even higher-level executives, and it almost seems like involving legal was an afterthought." The Court stated that this is like the "RJ Reynolds case" that Plaintiffs cited saying that the court reviewing documents cannot close its eyes to the content of the documents. The Court stated that State Farm's actions were "tantamount to nighttime activities." The Court stated that it was like State Farm employees said, "Here's what we're gonna do, let's have legal look at maybe calling it something else." The Court stated that it was like State Farm employees said "We're gonna get some rope, a ladder [and other instruments associated with a kidnapping plan] and go in the window at night." The Court stated, "Then the lawyer looks at it and says 'this sounds like kidnapping. Let's call it something else.'"

8. Judge Palumbo went on to say that counsel knew or should have known that this plan could be "fraud," and noted that she found it "shocking" and that it appeared to her to be "willful blindness." She stated that she did not feel comfortable protecting the communication in question as attorney-client privileged or work product, as it was not something promulgated or put together to address pending or anticipated litigation but rather something put together to "keep the good times rolling" by ensuring that "the perfect words are used" when presented to State Farm executives at an SEO meeting or conference and used as talking points when promulgated throughout State Farm.

9. Judge Palumbo also stated that she did not think the materials are "afforded the protection that you are seeking." Judge Palumbo stated that she understood that it is State Farm's right to seek review from a higher court, that she appreciated that counsel for State Farm had "something that will have a quick turnaround time" and that she looked forward to, if State Farm appeals this to a higher authority, "that that takes place quickly." Judge Palumbo stated that "your further ask as to the stay in proceedings is going to be denied, as this is, in this Court's opinion, a

discovery matter that doesn't warrant the granting of an intermediate stay."

10. As used in this declaration, quotation marks are not intended to signify a verbatim transcription of what the Court said. Quotations indicate the declarant's best recollection of what occurred at the hearing.

11. A court reporter was also present for the October 26, 2026 hearing, and should be able to provide a transcript with additional details concerning Judge Palumbo's statements and the events that occurred that day.

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

October 28, 2026 in Oklahoma City, Oklahoma	s/ William E. Farrior
(Date and Place)	(Signature)

EXHIBIT 12

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT 26 2026

RICK WARREN
COURT CLERK

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Petitioner(s) Attorney(s) for Petitioner

--vs. Case No.

Respondent(s) Attorney(s) for Respondent

COURT MINUTE

Date: Judge

Hearing On:
Ruling By Court: