STATE OF OKLAHOMA } S.S.
CLEVELAND COUNTY

FILED

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In the office of the Court Clerk MARILYN WILLIAMS

IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. GENTNER DRUMMOND, OKLAHOMA ATTORNEY GENERAL, *Plaintiff*, v. **STATE FARM FIRE AND CASUALTY COMPANY** *Defendant*.	**CASE NO. CJ-2026-1066**

PLAINTIFF STATE OF OKLAHOMA'S RESPONSE TO DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S MOTION TO DISMISS

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I. FACTUAL BACKGROUND.

On December 4, 2025, the State of Oklahoma filed a Motion to Intervene or in the Alternative, Grant Access to Protected Discovery in *Hursh v. State Farm, et al*, CJ-2025-2626[1] ("Hursh Matter"). State Farm objected. On December 30, 2025, Judge Palumbo granted the State of Oklahoma's Motion to Intervene. Thereafter, on January 8, 2026, the State of Oklahoma filed its Petition for Intervention in the Hursh Matter.

On January 16, 2026, State Farm filed an Application to Assume Original Jurisdiction ("Hursh Intervention Writ")[2], alleging Judge Palumbo exceeded her jurisdiction by allowing the State of Oklahoma to intervene in the Hursh Matter. State Farm filed its Motion to Dismiss the State of Oklahoma's Petition for Intervention on January 20, 2026. On March 3, 2026, Judge Palumbo denied State Farm's Motion to Dismiss in its entirety. On March 23, 2026, State Farm submitted its Answer to the State of Oklahoma's Petition for Intervention in the Hursh Matter.

On June 23, 2026, after an *en banc* oral hearing on the Hursh Intervention Writ on April 27, 2026, the Oklahoma Supreme Court assumed original jurisdiction. *See* Ex. 1, *State Farm Fire & Cas. Co. v. Palumbo*, 2026 OK 51. The Oklahoma Supreme Court held, in relevant part:

> **The proper recourse could be for the Attorney General to bring his claims in a separate, independent lawsuit, which avoids the restraints of *Gettler* on intervention.** Likewise, State Farm could fully litigate its remaining arguments at that time before the district court, which are not addressed in this order. Indeed, the Attorney General admits his intent to file such an action. Maintaining these as distinct proceedings ensures that the State's broad interests are addressed in the correct forum while preserving the integrity of this private litigation.

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[1] Plaintiff references filings from the Hursh Matter for a full procedural history but is not attaching these filings as exhibits because they are voluminous. All filings and orders not attached can be found at https://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CJ-2025-2626&cmid=4427141 (last visited August 11, 2026).

[2] Plaintiff also references filings from the Hursh Intervention Writ for a full procedural history but is not attaching the filings as exhibits due to size. All filings not attached can be found at https://www.oscn.net/dockets/GetCaseInformation.aspx?db=appellate&number=123739 (last visited August 11, 2026).

See Ex. 1, *State Farm Fire & Cas. Co. v. Palumbo*, 2026 OK 51, at ¶ 7. The Oklahoma Supreme Court denied the State of Oklahoma's intervention because the claims asserted on behalf of the State would expand the original issues in the Hursh Matter. *See id.*

However, importantly, the Oklahoma Supreme Court expressly identified a separate, independent lawsuit as the proper procedural vehicle for the State through the Attorney General to refile these claims in a stand-alone action, which he did in this action, one day later on June 24, 2026, asserting the following claims: (1) Violations of the Oklahoma Consumer Protection Act ("OCPA"), (2) Violations of the Oklahoma Racketeer-Influenced and Corrupt Organization Act ("ORICO"), (3) Civil Conspiracy, and (4) Unjust Enrichment. *See* 6/24/2026 Petition. State Farm now seeks to dismiss these claims the Oklahoma Supreme Court welcomed the Attorney General to file, but State Farm fails to meet the heavy burden under the Motion to Dismiss standard and the law applicable thereto. As such, State Farm's Motion to Dismiss ("Motion") must be denied.

II. STANDARD OF REVIEW.

The "foundational principle of 'notice pleading'" is "firmly rooted in Oklahoma jurisprudence." *Orthman v. Premiere Pediatrics, PLLC*, 2024 OK CIV APP 7, ¶ 1, 545 P.3d 214, 128. All that is required for notice pleading is that the petition give fair notice of the claim and the grounds upon which it rests. *Gens v. Casady School*, 2008 OK 5, ¶ 9, 177 P.3d 565, 569; *see also Oil Valley Petroleum, LLC v. Moore*, 2023 OK 90, ¶ 74, 536 P.3d 556, 575, *as corrected* (Oct. 3, 2023). "A [petition] should not be dismissed for failure to state a claim unless it appears the plaintiff could prove no set of facts in support of his claim which would entitle him to relief." *Powell v. Seay*, 1976 OK 22, 553 P.2d 161, 167 (emphasis added); *Nestle Food Co. v. Crews*, 2000 OK 58, ¶ 17, 11 P.3d 205, 211 ("[A] petition must not be dismissed for failure to state a legally cognizable claim unless the allegations indicate beyond any doubt that the pleader can prove no set of facts which would entitle him to relief.") (internal citations omitted; emphasis added).

When evaluating a motion to dismiss, the court "must take as true the challenged pleading's allegations together with all reasonable inferences which may be drawn from them." *Wilson v. State ex rel. State Election Bd.*, 2012 OK 2, ¶ 4, 270 P.3d 155, 157 (internal citations omitted). Motions to dismiss are generally viewed with disfavor under this liberal standard, and to withstand a motion to dismiss it is not necessary for a plaintiff to either identify a specific theory of recovery or set out the correct remedy or relief to which he/she may be entitled. *Pryor v. Findley*, 1997 OK CIV APP 74, ¶ 2, 949 P.2d 1218, 1219. Further, the burden to show the legal insufficiency of the petition is on the party moving for dismissal. *See Nichols v. Pray, Walker, Jackman, Williamson & Marler, P.C.*, 2006 OK CIV APP 155, ¶ 2, 144 P.3d 907, 909.

Moreover, statutory consumer protection claims premised on unfair practices must only meet the pleading standard of 12 O.S. § 2008. *See Windy City Metal Fabricators & Supply v. CIT Technology Fin. Serv.*, 536 F.3d 663, 669-670 (7th Cir. 2008). Even if 12 O.S. § 2009(B) is applied, the Oklahoma Supreme Court repeatedly explains "particularity" under § 2009(B) is a notice-based requirement designed to enable a meaningful response, not an evidentiary burden at the courthouse door. *Gay v. Akin*, 1988 OK 150, ¶¶ 8, 15–18 (recognizing that "[p]articularity does not mean the plaintiff has to plead detailed evidentiary matters" (internal quotation omitted)). State Farm repeatedly invokes 12 O.S. § 2009(B) to demand individualized, claim file level specificity at the pleading stage. Oklahoma law does not impose that burden even where 2009(B) is applicable. The Court should apply the governing standard consistently throughout the Motion's, rather than allowing the same heightened pleading theory to reappear under different labels.

III. THE ATTORNEY GENERAL HAS UNIQUE POWERS TO PROSECUTE THE CLAIMS AT ISSUE.

The premise the State Farm must overcome is the breadth of the office of the State's chief law officer, 74 O.S. § 18b(A), who holds "powers are as broad as the common law unless restricted or modified by statute." *State ex rel. Derryberry v. Kerr-McGee Corp.*, 1973 OK 132, ¶ 27; *accord Cherokee Nation v. U.S. Dep't of the Interior*, 2025 OK 4, ¶ 35 (quoting *Derryberry*). His authority is not confined to the powers a statute expressly enumerates. As the chief legal officer, he holds the common-law powers traditionally incident to the office except where the Legislature has clearly restricted or modified them, including authority to represent and protect the sovereign interests of the State, to institute proceedings to vindicate public rights, and to enforce laws enacted for the public benefit. *Derryberry*, 1973 OK 132, ¶¶ 20, 27; *Sarkeys v. Indep. Sch. Dist. No. 40*, 1979 OK 42, ¶¶ 11, 23.

The Legislature has charged the Attorney General with enforcing the OCPA and the ORICO, and it has specifically directed him to protect insurance consumers and to investigate and prosecute insurance fraud. The Oklahoma Legislature empowered the Attorney General: "To represent and protect the collective interests of insurance consumers of this state in rate-related proceedings before the Insurance Commissioner or in any other state or federal judicial or administrative proceeding." 74 O.S. § 18b(A)(22). Furthermore, under 74 O.S. § 18b(A)(3), the Attorney General has broad authority: "To initiate or appear in any action in which the interests of the state or the people of the state are at issue." This Court should reject State Farm's attempt to insulate itself from scrutiny based on concocted legal arguments and permit the Attorney General to fulfil his duties to protect the collective interests of insurance consumers.

The Oklahoma Supreme Court recognized the same breadth of authority at the hearing before deciding on *State Farm Fire & Cas. Co. v. Palumbo*, 2026 OK 51. At the *en banc* hearing on the Attorney General's intervention, which took place on April 27, 2026, several of the Justices focused their questions on the fact that only the Attorney General can bring ORICO claims.[3]

That an industry has a dedicated regulator does not subtract from that breadth of authority, because overlap is the design of Oklahoma's executive, not a defect in it. In fact, the Commissioner issued a letter to the Attorney General, wherein he stated, in relevant part: "I request that you, as Oklahoma's chief legal officer, partner with my office to continue your investigation, intervention, and prosecution in Hursh v. State Farm, et al., CJ-25-2626, in the District Court of Oklahoma County, as well as any appeals or writs related to that action." *See* Ex. 2, Mulready Letter. Far from encroaching on the Commissioner's jurisdiction, the Commissioner welcomed the Attorney General to investigate and prosecute State Farn.

The Constitution does not place executive power in one set of hands; it distributes that power among several independently elected officers, the Attorney General and the Insurance Commissioner among them, who together make up the executive department. Okla. Const. art. VI, § 1. The executive department "comprehends and includes several separate and distinct departments," each "given certain specified powers and charged with certain specified duties," and each "endowed with a limited independence and held directly responsible to the electorate." *Bynum v. Strain*, 1923 OK 596, ¶ 17. Because both officers are elected and answer to the voters, neither is subordinate to the other, and neither concentrates unaccountable power. A plural

[3] There is no formal *en banc* transcript but the entire arguments were recorded and posted by OSCN at https://vimeo.com/1187108887?fl=pl&fe=sh (last visited August 17, 2026). The majority of the questions from the Justices pertained to the sole powers of the Attorney General, which the Commissioner has no jurisdiction over. For example, Justice Kuehn asked at 8 minutes and 10 seconds: "Then comes our quandary, right? Because we have statutes on the books like OCPA, ORICO, ODTPA, whatever acronym we're going to throw out there, that says only the attorney general can file those types of claims, I believe. And how do you explain 18BA22 that says the attorney general can represent insurance companies in rate-related proceedings before the insurance commissioner or any state or other judicial proceeding, which we could read as if someone's doing something that violates the OCPA. How does this court balance the statutory right of the attorney general to bring those types of claims?"

executive of that kind necessarily produces overlapping authority. The Banking Department supervises state banks, yet the Attorney General may investigate a bank's dealings with consumers. The question is therefore never whether two officers' authority touches the same regulated party. The question is whether one officer holds the authority exclusively. No statute has done that here, and State Farm identifies none.

State Farm's contention that only the Insurance Commissioner ("Commissioner") may act against insurers rests on an overreading of Article 6, Section 22, of the Oklahoma Constitution and Title 36 of Oklahoma statutes. State Farm disregards the Legislature's later, specific assignment of consumer-protection responsibilities to the Attorney General. State Farm's expansive reading of Article 6, Section 22, of the Oklahoma Constitution creates a direct conflict between the directives in Title 75 and the Oklahoma Constitution's grant of power to the Attorney General under Article 6, Section 1. This construction would render 74 O.S. § 18b(22) and 74 O.S. 18n-1 meaningless, as the Attorney General would not be able to protect the interests of all insurance consumers in any proceeding because he would be powerless to protect those interests without enforcement mechanisms.

The Commissioner has authority to regulate insurers and enforce Title 36, but nothing in that title states such authority is exclusive or that it repeals the Attorney General's separate mandate to protect insurance consumers and investigate fraud. *See* 74 O.S. § 18b(A)(22)–(23); 74 O.S. § 18n-1. State Farm's reliance on *Oklahoma Benefit Life Association v. Bird*, 1943 OK 103, is therefore misplaced. Motion at p. 4. *Bird*, decided more than eighty years ago, addressed the appointment of a receiver for an insolvent insurer, a narrow regulatory solvency question, and predated § 18b(A)(22) by decades. 1987 Okla. Sess. Law., Ch. 39, § 1 (eff. Nov. 1, 1987). It did not, and could not, nullify a statutory mandate that did not yet exist. *Bird* held only that a single policyholder could not displace the Commissioner in a receivership, said nothing about enforcement of generally applicable law, and predates the modern enactment of § 18b(A)(22). Its actual rule helps the Attorney General: where the Legislature has designated an officer to prosecute a class of cases, "such cases cannot be maintained by any other person." 1943 OK 103, ¶¶ 5-6. (citing *State ex rel. Murray v. Pure Oil Co.*, 1934 OK 514). The Commissioner is designated to administer Title 36; the Attorney General is designated to enforce the OCPA and the ORICO. Those designations coexist, and the Legislature exempted insurers from neither. At most, State Farm complains that dual oversight is inconvenient. Inconvenience is not irreconcilability.

Rather, where two statutes may coexist, each should be given effect. *See Strong v. Laubach*, 2004 OK 21, ¶ 5 (stating that legislative acts "should be construed in such a way as to reconcile the provisions and render them consistent and harmonious, giving force and effect to each. This is known as the rule of *in pari materia*."). Accordingly, a statute granting the Insurance Commissioner authority to administer and enforce the Insurance Code should not be construed to impliedly repeal the Attorney General's independent authority to enforce separate statutes of general applicability unless the Legislature has clearly expressed such an intent. No such intent has been expressed. These statutes can be read harmoniously: the Commissioner administers Title 36, and the Attorney General vindicates broader public interest through general judicial enforcement of statewide laws governing competition, fraud, or consumer protection, which the legislature has specifically directed him to do under 74 O.S. § 18b(A)(3), (22).

State Farm treats the recent decision in *Cherokee Nation*, as if it were a cutback on the Attorney General's powers. Motion at p. 6. *Cherokee Nation v. United States Dep't of the Interior*, 2025 OK 4. Instead, *Cherokee Nation* reaffirms the Attorney General's status as the State's "chief law officer," recognizes that his statutory authority under 74 O.S. § 18b grants "broad authority", and holds only that this authority must be harmonized with independent constitutional powers of another officer when both are before the court speaking for the State in the same case. 2025 OK 4, ¶¶ 23, 29–32. *Cherokee Nation* does not say, and cannot be read to say, that the Attorney General is barred from appearing to protect the collective interests of insurance consumers.

The Oklahoma Legislature has assigned the Attorney General the duty to protect "the collective interests of insurance consumers" in "any" judicial proceeding. 74 O.S. § 18b(A)(22). State Farm cannot rely on implied repeals, distinguishable separation-of-powers cases, or irrelevant out-of-state authority to override the Oklahoma Legislature's clear command. 74 O.S. § 18b(A)(22) mandates that the Attorney General protect the "collective interests of insurance consumers" in "any" judicial proceeding. This litigation implicates those interests directly.

IV. THE COMMISSIONER'S CONSTITUTIONAL CHARGE IS ADMINISTRATIVE, AND DOES NOT CARVE STATE FARM OUT OF THE ATTORNEY GENERAL'S AUTHORITY

Unable to point to any statute withdrawing the Attorney General's enforcement power to bring the claims State Farm seeks to dismiss, State Farm manufactures one out of the Commissioner's constitutional charge. Motion at p. 7. The Constitution charges the Insurance Department "with the execution of all laws . . . in relation to insurance and insurance companies," Okla. Const. art. VI, § 22, and the Commissioner carries it out by administering Title 36, the approval of rates and forms, licensing, examinations, and solvency. Reading this provision of Constitution and 36 OS § 307 to give exclusive authority to execute all laws in relation to insurance companies is simply unworkable and leads to absurd results: the Secretary of State, OTC, Workers Compensation Court, EEOC, and many other state entities all have law in relation to insurance companies and exclusive authority cannot be read into these provisions. To "execute" the insurance laws means to administer them. It does not mean to displace every other officer's authority over every statute in the Oklahoma Statutes that happens to touch an insurer.

State Farm's contrary reading has no limiting principle and produces results Oklahoma courts will not adopt. Taken seriously, it would mean that no officer of the State could pursue a licensed insurer for fraud, conspiracy, or any other generally applicable violation, because all of it would belong to the Commissioner alone. And the Constitution uses parallel language to charge the Department of Mines with "the execution of all laws . . . in relation to mining activities and corporations engaged in mining activities," Okla. Const. art. VI, § 25, so if § 22 makes the Commissioner the sole enforcer of every law touching an insurer, the identical words make the Department of Mines the sole enforcer of every law touching a mining company. Courts do not read the Constitution or a statute to produce results that absurd, or to open enforcement gaps the text does not require. *Ledbetter v. Okla. Alcoholic Beverage Laws Enf't Comm'n*, 1988 OK 117, ¶ 7; *Taylor v. State Farm Fire & Cas. Co.*, 1999 OK 44, ¶ 19. The only feature that might set insurance apart is the constitutional nature of the charge to the Insurance Department to execute the insurance laws. But as shown, that charge is administrative, not a grant of exclusive enforcement, and the identical charge to the Department of Mines confirms as much. Sections 22 and 25 describe administrative missions. Neither hands an industry immunity from the generally applicable laws the Attorney General enforces.

State Farm's constitutional framing also obscures the real character of the authority it invokes. The Commissioner's power to review rates against the standard of excessive, inadequate, or unfairly discriminatory rates is not itself constitutional, it is conferred by the Insurance Code. Even then, the Commissioner lacks the power to bring OCPA and the ORICO actions. *See e.g.* 22 O.S. § 1404(C) ("No person shall institute any proceedings, civil or criminal, pursuant to the provisions of this act, except the Attorney General, any district attorney or any district attorney appointed under the provisions of Section 215.9 of Title 19 of the Oklahoma Statutes."). The Legislature could not have been plainer. ORICO permits no private enforcement at all, and it names the only officers who may bring an action under it: the Attorney General and district attorneys. 22 O.S. § 1404(C). The Commissioner is neither.

No Oklahoma court has granted State Farm the immunity it seeks, because if the Attorney General cannot bring ORICO claims against insurance companies, no one in Oklahoma can. Under the rules of statutory construction, the OCPA exemption under 15 O.S. § 754 does not prohibit the Attorney General from bringing OCPA claims against State Farm related to its unfair and deceptive scheme. The Attorney General is bringing this action, not on behalf of individuals personally aggrieved by State Farms violations in an individual transaction, but rather, in his role as chief legal officer to protect the public interest from State Farm's unfair, and deceptive trade practices. The OCPA exemption does not prohibit these claims because they do not involve transactions that are regulated. Rather, the claims involve an overarching scheme that harms Oklahomans. When the OCPA statutory language is viewed in its entirety and in conjunction with the Attorney General's statutory authority, it is evident the alleged unfair and deceptive scheme implemented by State Farm is exactly the type of conduct for which the Attorney General is authorized to pursue remedies under the OCPA.

When State Farm pressed the very contentions advanced here, that Article VI and the Insurance Code vest exclusive authority in the Commissioner and that the OCPA does not reach insurers, the Oklahoma Supreme Court declined to adopt its position, resolving the matter on a procedural intervention ground and expressly leaving open the Attorney General's authority and the reach of the OCPA. *State Farm Fire & Cas. Co. v. Palumbo*, 2026 OK 51, ¶ 3. State Farm thus draw no support from that decision. What the Court did say fits the Attorney General's position: it pointed not to the Commissioner's rate process but to "a separate, independent lawsuit" as the avenue for "the State's broad interests." *Id.* ¶ 7. The decision leaves his authority unencumbered and forecloses any argument that the State's interests may be pursued only as an adjunct to the Commissioner's rate process. At a minimum, *Palumbo* grants no immunity, and its recognition that those interests belong in a forum of the Attorney General's own cuts against State Farm.

V. THE OCPA'S REMEDIAL PURPOSE REQUIRES A NARROW READING OF § 754(2) THAT PRESERVES PUBLIC ENFORCEMENT AGAINST UNFAIR AND DECEPTIVE TRADE PRACTICES

State Farm confuses the Commissioner's regulatory power with the Attorney General's power to seek damages for those aggrieved in District Court on behalf of the State under the OCPA, ORICO, and unjust enrichment claims. The Legislature gave the Attorney General his investigative authority directly, and nothing in Title 36 takes it away. Contrary to the insurance companies' assertion, nothing in the Oklahoma Constitution or Title 36 gives the Insurance Commissioner **exclusive** authority to enforce all laws applicable to insurers, nor does the Code expressly prohibit the Attorney General from enforcing generally applicable statutes against insurance companies. Exercising that authority does not offend the separation of powers. In fact, it avoids the concentration of power. And it infringes on none of the Commissioner's constitutional duties. The Commissioner's authority over the insurance laws and the Attorney General's authority to enforce the State's generally applicable laws coexist. The former does not deprive the Attorney General of the latter.

The language State Farm seeks to broadly read to shield itself from OCPA[4] liability is under

[4] The primary goal of statutory interpretation is to ascertain and follow the Legislature's intention. *See Fulsom v. Fulsom*, 2003 OK 96. Courts seek to avoid a construction that defeats clear legislative intent. *McNeill v. City of Tulsa*, 1998 OK 2, ¶ 9. Additionally, courts will "look to each part of the statute, to other statutes upon the same or relative subjects, to the evils and mischiefs to be remedied, and to the natural or

15 O.S. § 754(2), which states the OCPA shall not apply to "[a]ctions or transactions regulated under laws administered by the Corporation Commission or any other regulatory body or officer acting under statutory authority of this state or the United States." But the Legislature enacted the OCPA to expand, rather than contract, consumer protection against deceptive practices. In 1972, Oklahoma enacted the OCPA. Oklahoma and almost every other "state[] began to enact consumer protection laws designed to parallel and supplement Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), which Congress adopted to protect citizens against unfair trade practices." *Patterson*, 2000 OK 92, ¶ 27. The FTC "strongly encouraged these state-level activities, recognizing that enforcement of the Act's broad section 5 proscription against 'unfair or deceptive acts or practices' could not possibly be accomplished without extra agency assistance." *See* Leaffer and Lipson, *Consumer Actions Against Unfair or Deceptive Acts or Practices: The Private Uses of Federal Trade Commission Jurisprudence*, 48 Geo. Wash. L.Rev. 521, 522 (1980). Specifically, the purpose of consumer protection legislation was "**to prevent fraud and deception in consumer transactions.**" *James v. Tyson Foods, Inc.*, 2012 OK 21, ¶ 25 (emphasis added). Traditional common-law fraud claims provided an inadequate remedy, and UDAP statutes were intended to relegate the elements of common-law fraud.[5] Read against that backdrop, the intent of the OCPA is clear: to provide the Attorney General with broad authority to protect consumers from fraud and deception. The OCPA exemption must be liberally construed to effectuate this purpose.

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absurd consequences of any particular interpretation." *Lozoya v. State*, 1996 OK CR 55, ¶ 20. "**Because the OCPA is remedial in nature it is to be liberally construed to effectuate its underlying purpose.**" *Patterson v. Beall*, 2000 OK 92, ¶ 28 (emphasis added).

[5] *See Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 703–04, 322 N.E.2d 768, 779 (1975): "As numerous FTC cases have made clear, the definition of an actionable 'unfair or deceptive act or practice' goes far beyond the scope of the common law action for fraud and deceit. To cite only a few distinctions, in the statutory action proof of actual reliance by the plaintiff on a representation is not required, *United States Retail Credit Assn. Inc. v. Federal Trade Commn.*, 300 F.2d 212, 221 (4th Cir. 1962), and it is not necessary to establish that the defendant knew that the representation was false, *Montgomery Ward & Co., v. Federal Trade Commn.*, 379 F.2d 666, 670 (7th Cir. 1967)."

Further, the alleged State Farm scheme is not a regulated claims-adjustment process; it is an alleged scheme using concealed, extra-contractual standards to deny benefits State Farm was contractually obligated to pay while representing otherwise to policyholders. Fraud is not a "transaction regulated" under the Insurance Code because no regulatory framework governs it—fraud is instead prohibited by laws of general application that the Attorney General enforces.

Finally, the limits of administrative insurance regulation underscore why § 754(2) cannot be read as an immunity provision. The Oklahoma Insurance Department is given authority over certain types of unfair methods of competition under 36 O.S. § 1204, but none of the defined categories govern the enterprise-level conduct and business practices alleged here. Consistent with this mismatch, State Farm fails to identify any specific regulation that would be violated pursuant to the AG's theory. Additionally, no action under Title 36 supplies an administrative mechanism capable of redressing the statewide harm alleged. As such, claims in this case do not relate to "actions or transactions" regulated within the meaning of § 754(2).

Under Section 754, the OCPA exemption only applies to those transactions regulated under laws administered by a regulatory body. Here, the AG's claims focus on State Farm's unfair and deceptive conduct in designing and implementing the hail initiative, conduct that is not itself a regulated consumer transaction administered by a regulatory agency. Rather, the alleged conduct is a broad unfair trade practice substantially likely to harm consumers when they enter a consumer transaction in the future. Title 15 O.S. § 754(2) exempts only "actions or transactions" regulated under laws administered by any regulatory body. "Actions" is not defined. Consumer transactions are defined as "the advertising, offering for sale or purchase, sale, purchase, or distribution of any services or any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing of value wherever located, for purposes that are personal, household, or business oriented." Here, State Farm's offering of an insurance policy to *a* consumer would be a consumer transaction.

"Actions and transactions" must be read together in context. Under settled canons of construction, including *noscitur a sociis*[6], the word "actions" derives its meaning from the accompanying term "transactions." Thus, "actions" must be limited to conduct within a consumer transaction. Otherwise, "transactions" does no work and would be superfluous, which courts seek to avoid. *See State, ex rel., Pruitt v. Steidley*, 2015 OK CR 6, ¶ 12, 349 P.3d 554, 558. Therefore, the exemption must be read to apply only to conduct occurring within consumer transactions that are affirmatively regulated elsewhere—not to governmental enforcement actions seeking to hold violators liable for conduct that broadly harms Oklahoma insurance consumers.

Where claims by, or on behalf, of individuals will necessarily arise out of the consumer transaction, this is not always the case when the Attorney General is bringing claims in the public's interest. *See* 15 O.S. § 761.1. Here, the crux of the OCPA allegations against State Farm is it deceptively and unfairly designed and implemented the hail focus initiative to reduce claim payments in violation of 15 O.S. § 753(21). The allegations are categorically broader than any individual transaction and focus on State Farm's overarching behavior that is likely to harm consumers when entering a consumer transaction.

The OCPA confirms this breadth by defining "unfair trade practice" and "deceptive trade practice" without confining them to the moment of the transaction. An unfair trade practice is defined as "any practice which offends established public policy or if the practice is immoral,

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[6] *See Sullins v. Am. Med. Response of Oklahoma, Inc.*, 2001 OK 20, ¶ 19. By contrast, in relation to the argument made by State Farm in its pending extraordinary writ, the canon has no application to the 74 O.S. 18b(A)(22) phrase "any other state or federal judicial or administrative proceeding," which is introduced disjunctively, framed as a residual grant of authority, and intended to expand, not limit, the forums in which insurance consumers may be represented. Applying *noscitur a sociis* there would contradict the text, render key language surplusage, and invert the statute's structure.

unethical, oppressive, unscrupulous or substantially injurious to consumers." 15 O.S. § 752(14). Further, a deceptive trade practice "may occur before, during or after a consumer transaction is entered into and may be written or oral." 15 O.S. § 752(16). In this suit, the Attorney General in his *parens patriae* capacity alleges State Farm committed unfair and deceptive trade practices by implementing a statewide scheme that is substantially injurious to consumers. The focus of this claim is not individual transactions between State Farm and an individual consumer. Rather, the focus of the claim is State Farm's scheme coordinated with their captive agents[7] in the state that injures Oklahoma consumers, which does not pertain to an action or transaction that is regulated by some other entity.

There are no Oklahoma published opinions holding the OCPA exemption applies to the Attorney General or even analyzed how the exemption would apply to public-interest enforcement actions. All Oklahoma court opinions discussing the OCPA exemption have done so in the context of private consumer lawsuits to determine whether those particular transactions fell within the scope of the OCPA's exemption. For example, in *Estate of Hicks ex rel. Summers v. Urban East Inc.*, the court explained the Act "exempts transactions regulated under laws administered by any regulatory body acting under statutory authority of the state or United States." 2004 OK 36, ¶ 32. It then held the exemption barred the private claim because the "action or transaction" involved representations about services and level of care regulated by the Oklahoma Department of Health. *Id.* However, these cases are inapplicable because each of these cases only evaluated whether an aggrieved consumer was barred from pursuing OCPA claims when the actions in the underlying consumer transaction were regulated. They did not evaluate a claim by the Attorney General on

[7] State Farm argues the civil conspiracy claim fails because they are foreclosed by the OCPA's business exception. Motion at p. 13. Since that argument fails, as shown in this brief, and State Farm does not allege any pleading deficiencies in the civil conspiracy claim, Plaintiff does not address how the civil conspiracy claim is properly plead.

behalf of the public interest for schemes that broadly affect insurance consumers.

The Oklahoma Supreme Court recently held the OCPA exemption barred an individual from seeking OCPA remedies against a mortgage servicer who filed a foreclosure petition. *See U.S. Bank Nat'l Ass'n as trustee for Sasco Mortg. Loan Tr. 2004-GEL2 Mortg. Backed Notes, Series 2004-GEL2 v. Hill*, 2023 OK 86, ¶ 26. The Court held the OCPA exemption applied to bar the consumer OCPA claims because the offending transaction was regulated by the Consumer Financial Protection Bureau ("CFPB"), an agency created in 2010 and tasked with "extensive consumer protection and enforcement regarding the type of actions and transaction that occurred in the present case." *Id.* at ¶ 27. But that reasoning cannot be extended to bar the Attorney General from pursuing OCPA violations on behalf of the public interest without creating an absurd result. The CFPB was never intended to supplement State AG consumer protection authority. The CFPB's governing laws make it clear state AGs and the CFPB have concurrent jurisdiction to enforce the Consumer Financial Protection Act, supplementing the State's authority to enforce consumer laws. *See* Authority of States to Enforce the Consumer Financial Protection Act of 2010, 87 Fed. Reg. 6,311 (Feb. 4, 2022) (to be codified at 12 C.F.R. ch. X). Specifically, 12 U.S.C. § 5552(a)(3) states:

> No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

The Attorney General's transaction-based exemption interpretation avoids an absurd result by recognizing the limitations of the OCPA exemption. The OCPA exemption is not intended to restrict the Attorney General's power to act in the public interest to deter widespread deceptive and unfair trade practices.

State Farm's insurance/OCPA cases do not control. *Bayro*, *Conatzer*, *Ruffin*[8], and the similar federal decisions State Farm cites involved private insureds attempting to convert individual policy-sale or claim-handling disputes into private OCPA claims. Motion at 13, 16. Those courts considered whether a particular insured's transaction with an insurer, or a particular claim-adjustment dispute, was already regulated by the insurance code. This case is different. The Attorney General does not sue as a private policyholder seeking individualized contract or bad-faith relief arising from a single claim transaction. He sues in his sovereign and public-enforcement capacity to address an alleged statewide course of unfair and deceptive conduct directed at Oklahoma insurance consumers as a class. None of State Farm's cited insurance/OCPA cases addressed whether § 754(2) bars the Attorney General from invoking the OCPA's public-enforcement provisions to challenge an scheme that allegedly uses concealed, extra-contractual standards and coordinated conduct to injure consumers statewide. Reading those private-dispute cases as a categorical immunity rule for insurers would extend them far beyond their facts, nullify the Attorney General's express consumer-protection role, and transform § 754(2) from a transaction-based exemption into industry-wide immunity the Legislature did not enact."

Whereas, the Attorney General, when acting to benefit the public, has independent authority to investigate, seek injunctive relief, restitution, and civil penalties (up to $10,000 per violation) under §761.1(C) and §756.1 from "[a]ny person… found to be in violation of the" OCPA in a civil action. Oklahoma strengthened §761.1 in 1994 to provide the Attorney General with meaningful public remedies aimed at deterrence, not merely compensation, reflecting a policy choice that systemic deceptive conduct warrants systemic relief. *See May Dep't Stores Co. v. State*

[8] *Bayro v. State Farm Fire & Cas. Co.*, No. CIV-14-1084-D, 2015 WL 4717166 (W.D. Okla. Aug. 7, 2015); *Ruffin v. State Farm Fire & Cas. Co.*, No. CIV-14-1071-F, 2014 WL 12730326 (W.D. Okla. Dec. 16, 2014); *Conatzer v. Am. Mercury Ins. Co., Inc.*, 2000 OK CIV APP 141, 15 P.3d 1252.

ex rel. Woodard, 863 P.2d 967, 972 (Colo. 1993) (stating "CCPA's civil penalty requirement is intended to punish and deter the wrongdoer and not to compensate the injured party").

Simply, the OCPA provides the Attorney General with broad tools to address and stop widespread conduct harming Oklahoma consumers, including criminal prosecution. Administrative violations are not substitutes for criminal violations; therefore, it defies logic a violator could escape criminal prosecution under the exemption simply because some aspects of the business are regulated. Finally, under § 756.1(C)(5), the Attorney General even has the authority to request the court to "**revoke any license** or certificate authorizing that person to engage in business in this state." (emphasis added) The Legislature could not have intended § 754(2) to categorically bar OCPA enforcement whenever the violator is "regulated." Any licensee is regulated. Those tools would be largely nullified if § 754(2) were construed as a blanket exemption whenever a business is subject to some regulatory oversight.

VI. STATE FARM'S ORICO DISMISSAL THEORY FAILS AS A MATTER OF LAW.

To state a civil ORICO claim, the Attorney General must allege: (1) the existence of an "enterprise," (2) that the defendant was employed by or associated with the enterprise, (3) that the defendant conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs, (4) through a "pattern of racketeering activity," and (5) injury caused by the violation for which ORICO authorizes civil relief. 22 O.S. §§ 1403, 1408–1409. The Petition satisfies each element. It pleads an association-in-fact enterprise, State Farm's association with and direction of that enterprise, and State Farm's participation in the conduct of the enterprise's affairs through standardized mechanisms and coordinated actors. (Pet. ¶¶ 29–31, 41–42, 50–61.) The Petition further alleges a pattern of related and non-isolated racketeering acts carried out over time through uniform methods rather than isolated claim decisions. (Pet. ¶¶ 32–47, 60–67.) These allegations describe resulting statewide economic harm to Oklahoma policyholders and the insurance marketplace. (Pet. ¶¶ 48-51.)

ORICO expressly authorizes civil enforcement by the AG to restrain and remedy racketeering activity, including injunctive and equitable relief aimed at ongoing and systemic misconduct. 22 O.S. §§ 1408–1409. Where ORICO tracks federal ORICO, Oklahoma courts may consult and follow federal courts' construction of parallel provisions. 22 O.S. § 1419. Federal ORICO, in turn, is to be "liberally construed to effectuate its remedial purposes." *Reves v. Ernst & Young*, 507 U.S. 170, 183–84 (1993). ORICO defines a "pattern of racketeering activity" as two or more related, non-isolated occasions connected to the enterprise's affairs. 22 O.S. § 1402(5). That concept tracks federal ORICO's settled pattern framework, which turns on relatedness and continuity, not on pleading every affected transaction as a separate narrative unit. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239–43 (1989). The statute requires allegations showing relatedness, continuity, and non-isolation. The Petition does so.

The Petition alleges a centrally directed, multi-year initiative applied across Oklahoma through standardized methods rather than isolated claim handling decisions. (Pet. ¶¶ 1-44, 48-55, 66-76). It pleads repeated occasions implementing the same undisclosed internal standards and standardized rationales to suppress indemnity payments, with continuity across storms, claims, and time. *See id.* Those allegations describe repeated racketeering occasions tied to the affairs of a single enterprise, not a single event or a one-off dispute. Unjust enrichment is an equitable restitution doctrine designed to prevent a wrongdoer from retaining benefits that, in good conscience, should not be kept. Oklahoma recognizes restitutionary relief as a core equitable tool, including in public enforcement actions seeking to deprive defendants of ill-gotten gains. *Okla. Dep't of Sec. ex rel. Faught v. Blair*, 2010 OK 16, ¶¶ 15–23. The Petition alleges enrichment through retention of amounts that should have been paid on covered losses and a corresponding deprivation accomplished through the alleged program's uniform mechanics. (Pet. ¶¶ 77-80.).

12 O.S. § 2009(B) is a notice rule. It requires particularity as to the circumstances constituting fraud so a defendant can meaningfully respond. It does not require the AG, at filing, to plead the internal proof, computer logs, or claim-file specifics that State Farm insists upon. Oklahoma courts also treat FRCP 9(b) decisions as instructive in applying § 2009(B) because the text tracks Rule 9(b). *Gay v. Akin*, 1988 OK 150, ¶¶ 8–11. Federal ORICO cases applying Rule 9(b) confirm that the rule "must be read in conjunction with Rule 8," and that its purpose is "to afford a defendant fair notice of a plaintiff's claim and the factual ground supporting these claims," not to require a plaintiff to plead facts that are uniquely within the defendant's control. *George v. Urban Settlement Servs.*, 833 F.3d 1242, 1255–56 (10th Cir. 2016) (internal quotation omitted). In *George*, the Tenth Circuit emphasized that Rule 9(b) does not demand pleading every alleged misrepresentation but instead requires that allegations be evaluated in light of the complaint as a whole. *Id.* at 1257. The court further recognized that Rule 9(b) does not require "omniscience" at the pleading stage and permits allegations on information and belief where "the facts are peculiarly within the opposing party's knowledge." *Id.*

VII. IF THE COURT FINDS ANY DEFICIENCY, ATTORNEY GENERAL RESPECTFULLY REQUESTS LEAVE TO AMEND, AS REQUIRED.

Should the Court find any portion of the Attorney General's Petition insufficient, he would request leave to amend to remedy any deficiency. Under 12 O.S. § 2012(G), if a motion to dismiss is granted for failure to state a claim, the court must grant leave to amend and set a deadline for doing so; dismissal with prejudice may occur only if no amended pleading is timely filed. The Oklahoma Supreme Court has held that it is an abuse of discretion to dismiss with prejudice at the pleading stage where a potentially curable defect exists. *Fanning v. Brown*, 2004 OK 7, ¶ 23.

WHEREFORE, for the reasons set forth above, the Attorney General respectfully requests that the Court deny Defendant State Farm's Motion to Dismiss in its entirety. In the alternative, to the extent the Court determines that any claim or theory is insufficiently pleaded but the defect can be remedied, the Attorney General requests that the Court grant leave to amend.

Respectfully submitted,

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ATTORNEYS FOR THE STATE OF OKLAHOMA

CERTIFICATE OF SERVICE

I hereby certified that on August 20th, 2026, a true and correct copy of the above and foregoing document was served by placing the same in the United States Mail, postage prepaid, to the following:

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2026 OK 51

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE FARM FIRE & CASUALTY COMPANY,

Petitioner,

v.

THE HONORABLE AMY PALUMBO, Oklahoma County District Judge,

Respondent,

and

BILLY HURSH and LACY HURSH,

Real Parties in Interest,

and

GENTNER DRUMMOND in his official Capacity as Attorney General of Oklahoma,

Real Party in Interest.

No. 123,739

FOR OFFICIAL PUBLICATION

ORDER

¶1 Original jurisdiction is assumed. Okla. Const. art. VII, § 4. The Court will assume original jurisdiction and grant extraordinary relief when the district court has exceeded its authority. *Murrell v. Cox*, 2009 OK 93, ¶ 23, 226 P.3d 692, 697. Petitioner State Farm Fire & Casualty Company ("State Farm") has shown, for the reasons stated herein, that the district court exercised judicial power unauthorized by law, and no adequate remedy at law exists. *Cannon v. Lane*, 1993 OK 40, ¶ 12,

EXHIBIT
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867 P.2d 1235, 1239. A writ of prohibition is issued to Oklahoma County District Court Judge Amy Palumbo, or any other assigned judge, in *Billy & Lacy Hursh v. State Farm Fire & Casualty Company*, No. CJ-2025-2626 (Oklahoma County), barring the enforcement of the December 30, 2025 order that granted intervention by the Attorney General.

¶2 On April 17, 2025, Billy Hursh and Lacy Hursh ("Hurshes") filed a petition against State Farm alleging breach of contract, bad faith, constructive fraud, and negligent misrepresentation following a dispute over hailstorm loss coverage. The district court later granted the Attorney General's motion to intervene, allowing the State to assert claims for injunctive relief and damages under the Oklahoma Consumer Protection Act ("OCPA"), 15 O.S.2021, §§ 751-764.1, the Oklahoma Racketeer-Influenced and Corrupt Organizations Act ("RICO"), 22 O.S.2021, §§ 1401-1419, and the Oklahoma Deceptive Trade Practices Act, 78 O.S.2021, §§ 51-56, as well as claims for civil conspiracy and unjust enrichment. State Farm now seeks a writ regarding that intervention order, and this Court heard oral arguments on April 27, 2026.

DISCUSSION

¶3 The Court must determine whether the district court abused its discretion by permitting the Attorney General's request to intervene in the underlying litigation. Here, allowing intervention would impermissibly expand the scope of the underlying litigation, violating a fundamental procedural rule for intervention. Since the Court finds intervention was improper procedurally, we need not address the grounds for intervention or the remaining arguments raised by State Farm.

¶4 It is a fundamental procedural rule in Oklahoma that an intervenor must take the case as they find it; they are not permitted "to enlarge the issues or compel an alteration of the proceedings, or to include matters not germane to the issues presented." *Gettler v. Cities Serv. Co.*, 1987 OK 57, ¶ 9, 739 P.2d 515, 518. Indeed, an intervenor "is admitted to the proceeding as it stands," and cannot be allowed to expand the litigation beyond its original scope or character. *Franklin v. Margay Oil Corp.*, 1944 OK 316, ¶ 49, 153 P.2d 486, 497. Because the Attorney General's claims introduce issues foreign to the underlying contract dispute, intervention would violate these established procedural limits.

¶5 The underlying litigation is a private contract dispute centered on a specific bad faith claim against State Farm for hail damage to a single property. The Attorney General's intervention transforms this narrow action into a broad, statewide proceeding. By merging numerous generalized claims with a single, concrete dispute in Oklahoma County, the nature of the litigation is fundamentally altered. Such an expansion forces the original parties to litigate issues untethered to the Hurshes' actual loss, effectively overwhelming the specific merits of the private claim with matters far exceeding the scope of the original petition.

¶6 The applicable law in the Attorney General's proposed claims diverges from the underlying bad faith action. The Hurshes' claims are governed by established principles of contract law and the duty of good faith. In contrast, the Attorney

General's pursuit of RICO allegations introduce quasi-criminal elements that would not only impermissibly broaden the scope of this civil contract dispute but also the nature of the recovery sought. The Attorney General seeks public-interest remedies like injunctive relief, civil penalties, and disgorgement, which are fundamentally different from the Hurshes' private contract damages. Such an expansion is impermissible under Oklahoma law.

¶7 The proper recourse could be for the Attorney General to bring his claims in a separate, independent lawsuit, which avoids the restraints of *Gettler* on intervention. Likewise, State Farm could fully litigate its remaining arguments at that time before the district court, which are not addressed in this order. Indeed, the Attorney General admits his intent to file such an action. Maintaining these as distinct proceedings ensures that the State's broad interests are addressed in the correct forum while preserving the integrity of this private litigation.

¶8 Accordingly, we issue a writ of prohibition, barring the enforcement of the December 30, 2025 order that permitted the Attorney General to intervene in the underlying suit brought by the Hurshes.

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THE 23rd DAY OF JUNE, 2026.

CHIEF JUSTICE

CONCUR: Rowe, C.J., Kuehn, V.C.J., and Edmondson, Combs and Gurich, JJ.,and Downing and Huber, S.JJ.
CONCUR IN RESULT: Winchester (by separate writing) and Darby, JJ.
RECUSED: Kane and Jett, JJ.

OKLAHOMA
INSURANCE
DEPARTMENT

COMMISSIONER GLEN MULREADY
400 NE 50th Street, Oklahoma City, OK 73105

January 29, 2026

Via E-mail

The Honorable Gentner Drummond
Attorney General of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105

Dear Attorney General Drummond:

I share your vision of doing anything we can within our authority to reduce Oklahoma homeowners' premiums and ensuring their rights and interests are protected. To this end, I request that you, as Oklahoma's chief legal officer, partner with my office to continue your investigation, intervention and prosecution in *Hursh v. State Farm, et al.*, CJ-25-2626 in the District Court of Oklahoma County, as well as any appeals or writs related to that action. I look forward to hearing from you and advancing our collaborative work in the best interests of the people of Oklahoma. Please ensure your office communicates with my office before adding my name or the Oklahoma Insurance Department to this case as a party.

Each of our offices is vested with separate regulatory powers and authority to protect and advance the interests of Oklahomans. Together, we must invoke our individual constitutional and statutory authority to protect Oklahoma insurance consumers and enforce the Oklahoma Insurance Code under title 36 of the Oklahoma Statutes, as well as the Oklahoma Consumer Protection Act, 15 O.S. §§ 751–764.1, and the Oklahoma Antitrust Reform Act, 79 O.S. §§ 201–212. *See* e.g., Okla. Const. art. VI, §§ 1, 22-23; 36 O.S. §§ 305, 307, 322-323, 332; 74 O.S. § 18b. My office stands ready to collaborate and engage with your office on future efforts to redress and prevent unfair trade and claims handling practices by homeowner's insurance companies in Oklahoma.

Please contact me if you have any questions or want to discuss anything further.

Respectfully,

Glen Mulready

GLEN MULREADY
Oklahoma Insurance Commissioner

EXHIBIT
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