IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 13 2026

SELDEN JONES
CLERK

STATE FARM FIRE & CASUALTY COMPANY, Petitioner, v. THE HONORABLE JEFF VIRGIN, Respondent, -AND- GARY LYLE and MELANIE LYLE, Real Parties in Interest, -AND- MARCUS BRUSO and RUTH BRUSO, Real Parties in Interest.	Sup. Ct. Case No. 124,192 Cleveland County Case Nos. CJ-2024-183, CJ-2024-1157

BRIEF OF *AMICI CURIAE*
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TORT REFORM ASSOCIATION
IN SUPPORT OF PETITIONER

Mary H. Tolbert, OBA #17353
FULLER TUBB BICKFORD WARMINGTON & PANACH, PLLC
201 Robert S. Kerr Avenue, Suite 1000
Oklahoma City, OK 73102
(405) 235-2575
molly.tolbert@fullertubb.com

John C. Neiman
C. William Courtney
Pro hac vice applications forthcoming
MAYNARD NEXSEN PC
1901 Sixth Avenue North, Suite 1700
Birmingham, AL 35203
(205) 254-1000
jneiman@maynardnexsen.com
wcourtney@maynardnexsen.com

Counsel for *Amici Curiae* the Chamber of Commerce of the United States of America and American Tort Reform Association

INDEX

INTRODUCTION

The discovery-sharing provisions in the district court's protective orders are astonishing. They give Plaintiffs' counsel upfront permission to use State Farm's most sensitive information in future cases, based purely on speculation that the information might be relevant to the claims of hypothetical future plaintiffs. The vast majority of courts around the country refuse requests for sharing provisions like the ones at issue here, and the national consensus is consolidating around that position. Even judged by the outdated pro-sharing opinions Plaintiffs relied upon below, these sharing provisions take things to a new level. If sharing provisions like the district court's become the norm, Oklahoma's business environment will suffer. Trade secrets are among the most valuable assets for businesses across many industries. And weak protective orders with gaping holes like the sharing provisions at issue threaten to erase the value of those assets in the blink of an eye. Businesses forced to produce confidential information under sharing orders have no recourse. That collateral damage is unjustifiable, especially because other jurisdictions have developed far better ways to facilitate legitimate discovery sharing. The Court should grant State Farm's petition.[1]

ARGUMENT

It is almost impossible to call the district court's orders "protective orders" with a straight face. The sharing provisions in the orders hand near-complete control of some of State Farm's most sensitive information to Plaintiffs' counsel for their unfettered, nationwide use.

---

[1] The Court granted the Chamber's application for leave to file an *amicus curiae* brief on July 2, 2026. On July 8, the Chamber filed an amended application for leave to file a joint *amici curiae* brief, which remains pending. Although the amended application sought leave to file on behalf of the Chamber and two other entities, this brief is filed solely on behalf of the Chamber and the American Tort Reform Association. If the Court denies the amended application, the Chamber respectfully requests that the Court either (1) construe this brief as being filed on behalf of the Chamber only, or (2) grant the Chamber leave to refile this brief on behalf of the Chamber only.

Permitting such an order to stand would undermine the governing rules that require discovery to be reasonable and proportional, making Oklahoma an extreme outlier jurisdiction. And because the consequences of producing confidential materials under such "protective orders" are almost impossible to mitigate, the district court's approach to discovery sharing will force businesses to think carefully before entering the state. What is more, the district court's approach is not even necessary to facilitate legitimate sharing. The approaches from other jurisdictions show that discovery sharing is best managed by modifying protective orders in the limited circumstances in which sharing becomes necessary in the future, not by giving blanket permission in advance. The Court should grant State Farm's petition.

I. Allowing the district court's so-called "protective orders" to stand would make Oklahoma a significant national outlier.

Amici do not doubt that discovery sharing may become appropriate in certain narrow circumstances, but the district court's orders are beyond the pale. An overwhelming majority of courts around the country that have considered similar sharing provisions have rejected them. That consensus is only growing stronger with time. The decisions Plaintiffs primarily relied upon below are products of a bygone era, and even those outdated decisions cannot support a sharing provision under the circumstances of this case.

Plaintiffs' suggestion to the district court that protective orders routinely include discovery sharing provisions like these is patently incorrect. In recent years, a dizzying array of state and federal courts have rejected sharing provisions like the ones imposed by the district court. *See, e.g.*, *Shaw v. Shandong Yongsheng Rubber Co.*, No. 1:18-CV-00867, 2019 WL 5593305, at *3 (D. Colo. Oct. 30, 2019); *Biazari v. DB Indus., LLC*, No. 5:16-CV-49, 2017 WL 1498122, at *3 (W.D. Va. Apr. 26, 2017); *Clippard ex rel. Clippard v. Yamaha Motor Corp.*, No. 5:14-CV-83-R, 2015 WL 1208551, at *2 (W.D. Ky. Mar. 17, 2015); *Byrd v. U.S.*

Xpress, Inc., 26 N.E.3d 858, 866 (Ohio Ct. App. 2014); *McKellips v. Kumho Tire Co. Inc.*, No. 13-CV-2393, 2014 WL 3541726, at *1 (D. Kan. July 17, 2014); *Beavers-Gabriel v. Medtronic, Inc.*, Civ. No. 13-00686, 2014 WL 7882099, at *2 (D. Haw. June 20, 2014); *Ramos v. Cooper Tire & Rubber Co.*, No. 10-CV-198, 2011 WL 13266815, at *6 (D.N.M. Mar. 8, 2011); *Long v. TRW Vehicle Safety Sys., Inc.*, No. CV-09-2209, 2010 WL 1740831, at *1 (D. Ariz. Apr. 29, 2010)); *Zappe v. Medtronic USA, Inc.*, No. C-08-369, 2009 WL 792343, at *1 (S.D. Tex. Mar. 23, 2009); *Cordis Corp. v. O'Shea*, 988 So. 2d 1163, 1168 (Fla. Dist. Ct. App. 2008); *Harris v. Kellogg, Brown & Root Servs., Inc.*, No. Civ. 08-563, 2008 WL 5246017, at *4 (W.D. Pa. Dec. 15, 2008); *Massachusetts v. Mylan Labs., Inc.*, 246 F.R.D. 87, 91 (D. Mass. 2007); *Gil v. Ford Motor Co.*, No. 1:06CV122, 2007 WL 2580792, at *6 (N.D. W.Va. Sept. 4, 2007); *Petersen v. DaimlerChrysler Corp.*, No. 1:06 CV 00108, 2007 WL 914738, at *1 (D. Utah Mar. 5, 2007).

In the proceedings before the district court, the only decisions the Plaintiffs cited that allowed discovery to be shared with litigants in collateral cases were a 1990 decision by the District of New Jersey, a 1982 decision by the District of Colorado, and a 1980 decision by the Western District of Texas. *See* App'x Tab 4 at 7 n.3 (discussing the Lyle plaintiffs' reliance on *Nestle Foods Corp. v. Aetna Casualty & Surety Co.*, 129 F.R.D. 483 (D.N.J. 1990), *Ward v. Ford Motor Co.*, 93 F.R.D. 579, 580 (D. Colo. 1982), and *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 154 (W.D. Tex. 1980)).

Even before reading the opinions cited in the preceding two paragraphs, an obvious difference jumps off the page: Whereas Plaintiffs' best cases are aging opinions from the 1980s, contemporary decisions support State Farm's position. That difference in citations reflects an obvious real-world trend. The smattering of cases Plaintiffs cited in the district court "do indeed show that sharing provisions have, in the past, been endorsed by jurisdictions across the country," *Rosas v. Goodyear Tire & Rubber Co.*, No. 5:18-CV-101, 2019 WL 3308481, at *5 (S.D. Tex. June 3, 2019), and that courts once believed that sharing provisions could foster efficiency. "But contrary to [Plaintiffs'] intimations, the trend appears to be away from inclusion of sharing provisions in protective orders." *Id.* (internal quotation marks omitted). The permissive minority approach to sharing provisions urged by Plaintiffs is not even an emerging view, but a dated and increasingly uncommon one.

Judicial support for sharing provisions has declined because experience has not borne out the pro-sharing optimism in the outdated opinions cited by Plaintiffs. Technology makes disclosure of confidential information far riskier today than it was in the 1980s. "An increasingly digitized and interconnected world seems more treacherous for confidential data than the bygone era of hard copies and certified mail." Zakary A. Drabczyk, *Share with Caution: The Dangers Behind Sharing Orders*, 65 WAYNE L. REV. 401, 422 (2020).

Indeed, the idea that sharing could increase judicial economy stood on shaky footing to begin with. Even assuming that sharing makes litigation cheaper, "[t]he likely result is more litigation without the offsetting efficiency of class aggregation," not an overall increase in efficiency. *Id.* at 427–28. And it remains doubtful that sharing decreases litigation costs. "[A]ny savings the use of sharing orders accrues are likely to be offset by the costs of contentious discovery disputes." *Id.* at 428. When protective orders do not place guardrails on the future use of sensitive information, defendants must fight disclosure tooth and nail. And in addition to increasing the intensity of discovery disputes, sharing also increases the number of disputes by creating incentives for plaintiffs' lawyers to seek broader discovery that "would not be economically rational" in the absence of sharing. *Id.*

In fact, the district court's approach is such an extreme outlier that it would have been an outlier even at the high-water mark of sharing provisions represented by the old cases Plaintiffs cite. Those cases relied on the fact that the materials to be shared were not sensitive. *See, e.g.*, *Ward*, 93 F.R.D. at 580 ("Plaintiffs' counsel voluntarily has agreed not to disclose any trade secrets turned up in discovery. Thus Ford no longer asserts any need to shield trade secrets as a basis for the protective order."). Here, Plaintiffs do not dispute that confidential and trade-secret materials they seek from State Farm are protected, but they nevertheless seek to freely share them.

The outdated opinions Plaintiffs cite also relied on the fact that the discovery was to be shared in a specific set of known cases involving identical facts. *See, e.g.*, *id.* at 579 (discussing plaintiffs' desire to share discovery between "[s]everal hundred . . . cases . . . filed in various courts throughout the United States" involving the same alleged product-design defect). Here, Plaintiffs have not similarly identified a set of known, existing cases, and other insurance-claim cases inevitably will involve diverging facts and policy forms. *See* Pet. at 13–14.

None of this is to say that Oklahoma law permits sharing outside of the trade-secrets context or based on the existence of collateral lawsuits. But the fact that the district court's sharing orders cannot be justified even by the outdated decisions Plaintiffs cite is powerful evidence of how extreme those orders really are. Declining to correct the district court's orders likely would make Oklahoma the most pro-discovery-sharing jurisdiction in the country.

II. Allowing unfettered discovery sharing in Oklahoma will expose businesses operating in Oklahoma to nationwide disadvantages that cannot be alleviated by other courts.

If Oklahoma becomes a hotbed of discovery sharing, businesses will have to think long and hard before entering the state. Trade secrets and other confidential and proprietary information are valuable assets, and that value can evaporate in the blink of an eye. Businesses in almost every industry rely heavily on trade secrets of some kind, not just insurers like State Farm. And if one state becomes an unusual discovery-sharing outlier, there is no effective way to limit the fallout in other states other than by avoiding the outlier jurisdiction.

The consequences of disclosing confidential and trade-secret information without the security of a genuine, non-sharing protective order are severe. "[F]ew assets are more valuable to defendants than confidentiality in litigation." Drabczyk, *supra*, at 421. That is especially true for businesses, like State Farm, whose most valuable assets are secret processes and information that competitors easily could capitalize upon if discovered. "Trade secrets should receive greater protection from discovery because they derive economic value from being generally unknown and not readily ascertainable by the public." *Ex parte Miltope Corp.*, 823 So. 2d 640, 645 (Ala. 2001) (alteration adopted) (internal quotation marks omitted). "If a trial court orders the discovery of trade secrets and such are disclosed, . . . [t]he proverbial bell cannot be unrung." *Id.* at 644–45 (internal quotation marks omitted).

Insurance is hardly the only industry in which trade secrets and other confidential information are among a company's most valuable assets. Courts have protected the full spectrum of confidential and proprietary information against discovery sharing, from "technological innovation" in the medical industry, *Cordis Corp.*, 988 So. 2d at 1166, to the nuts-and-bolts operational details of trucking and retail companies. *See Byrd*, 26 N.E.3d at 860 (preventing sharing of trucking company's "'proprietary and commercial information, including documents with financial, marketing, research, and customer information'"); *Menendez ex rel. Menendez v. Wal-Mart Stores E. LP*, No. 1:10-CV-53, 2012 WL 90140, at *3 (N.D. Ind. Jan. 11, 2012) (preventing sharing of retailer's "equipment and building blueprints, engineering documents, specifications, designs, and construction layouts that are kept secret from their competitors"). Indeed, it is difficult to imagine a business that would be comfortable operating in a state that routinely permitted its inner workings to be exposed in litigation and potentially to competitors across the country.

A business that is forced to disclose confidential information under an Oklahoma "sharing" protective order will have no way to mitigate that damage by turning to other courts in other jurisdictions. Even setting aside the real-world impossibility of unringing the bell once confidential information is disclosed, there is no realistic procedural path to even try. Once one court has required documents to be produced without the benefit of a genuine protective order, no mechanism exists for another court to limit the use of those documents in the separate cases before it. *Cf. Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66, 76 (S.D.N.Y. 2010) ("[T]he Federal Rules of Civil Procedure[ ] create no automatic prohibition against using discovery obtained in one litigation in another litigation.").

III. The proper way to facilitate discovery sharing is to modify protective orders if the need for sharing arises, not to authorize sharing up front.

Amici do not oppose discovery sharing in all circumstances. The central problem with automatic, upfront discovery sharing is permitting future collateral plaintiffs to "obtain discovery" that is not "proportional to the needs of the case" as required by 12 O.S. 2021, § 3226(B)(1)(a) (and, for that matter, by Federal Rule of Civil Procedure 26(b)(1) and the similar rules in numerous other jurisdictions). Indeed, section 3226 of the Discovery Code was amended in 2017 precisely to "emphasize that 'proportionality' is a core element in assessing the scope of discovery." *Chick-fil-A, Inc. v. Ogden*, 2026 OK 13, ¶ 11, 589 P.3d 138, 140–41. Automatic sharing provisions disregard proportionality by giving future plaintiffs unlimited access to sensitive information regardless of their needs.

Other jurisdictions have developed a more viable approach to discovery sharing that would respect both the limitations of the Discovery Code and the independent discovery authority of collateral courts. Instead of adding an automatic sharing provision to a protective order at the start of a case, courts overwhelmingly favor a modification-based approach where protective orders are adjusted if a concrete need for sharing arises in the future. Under that approach, collateral plaintiffs in federal courts can seek access to shared discovery by filing a motion for permissive intervention under Federal Rule of Civil Procedure 24(b) and asking the court to modify its protective order. A motion for permissive intervention under 12 O.S. 2021, § 2024(B) would be equally suited to that purpose.

If the Court endorses a modification-based approach to discovery sharing, it should adopt two essential features from the approaches developed in the federal appellate courts. *First*, the Court should secure the reliability of protective orders by clarifying that collateral plaintiffs seeking to share discovery must overcome a presumption against modification. *Second*, the Court should protect the independent authority of collateral courts by clarifying that any court that modifies a protective order to facilitate sharing must do so in a way that defers to the ultimate judgment of the court with jurisdiction over the collateral case.

1. District courts should apply a presumption against modification when faced with a request to modify a protective order to allow sharing with a collateral case. The United States Court of Appeals for the Second Circuit has long applied such a presumption, holding that "a District Court should not modify a protective order . . . 'absent a showing of improvidence in the grant of the order or some extraordinary circumstance or compelling need.'" *S.E.C. v. TheStreet.Com*, 273 F.3d 222, 229 (2d Cir. 2001) (alteration adopted) (quoting *Martindell v. Int'l Tel. & Tel. Corp.*, 594 F.2d 291, 296 (2d Cir. 1979)). The strength of that presumption should "depend[ ] on the nature of the protective order and whether it invited reasonable reliance by a party or deponent." *In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 255 F.R.D. 308, 318 (D. Conn. 2009). For example, a negotiated order covering specific confidential materials (like what State Farm requested in these cases) should be entitled to a strong presumption.

A presumption against modification is essential to enable protective orders to "serve the vital function of securing the just, speedy, and inexpensive determination of civil disputes by encouraging full disclosure of all evidence that might conceivably be relevant." *TheStreet.Com*, 273 F.3d at 229 (alterations adopted) (internal quotation marks omitted). "Unless a valid . . . protective order is to be fully and fairly enforceable, witnesses relying upon such orders will be inhibited from giving essential testimony in civil litigation." *Martindell*, 594 F.2d at 295. A presumption against modification also ensures fairness. Modifying a protective order may "unfairly disturb the legitimate expectations of litigants," especially when the existence of a protective order was "the only reason the [original plaintiff] had been afforded access to certain documents." *TheStreet.Com*, 273 F.3d at 230.

To determine whether a collateral plaintiff has overcome the presumption against modification, a district court should consider whether that plaintiff could access the same materials by conducting their own discovery in the collateral case. If a collateral plaintiff "is seeking to circumvent limitations on its ability to conduct discovery in its own case or to gain access to materials it would otherwise have no right to access"—including materials not discoverable under applicable relevance and proportionality requirements—"a court should refuse to modify the protective order." *In re EPDM Antitrust Litig.*, 255 F.R.D. 308 at 324. A collateral plaintiff has no legitimate need to share discovery they would otherwise have no right to access, much less a "*compelling* need." *TheStreet.Com*, 273 F.3d at 229 (emphasis added) (internal quotation marks omitted).

2. If a district court decides to modify a protective order to permit sharing, it must do so in a way that defers to the collateral court's ability to also run its own case. The purpose of modifying a protective order is to remove a barrier to sharing, not to usurp another court's authority by resolving disputes about the ultimate discoverability of documents in a separate case. A district court that "grant[s] collateral litigants access to discovery under its protective order" must still acknowledge that "'questions of the discoverability in the collateral litigation of the materials discovered in [the initial] litigation are, of course, for the collateral courts.'" *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1428 (10th Cir. 1990) (alterations adopted) (quoting *Superior Oil Co. v. American Petrofina Co.*, 785 F.2d 130, 130 (5th Cir. 1986)). "Even if the issuing court modifies the protective order, it does not decide whether the collateral litigants will ultimately obtain the discovery materials." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133 (9th Cir. 2003). In addition to promoting comity, deference is essential for efficiency reasons. If a court modifying its protective order is empowered to make the ultimate decision about discoverability in a collateral case, modification requests will draw courts deeply into the merits of collateral cases and make the system unmanageable.

It is never appropriate for a district court to give blanket, upfront permission to share discovery. But in unusual situations where a collateral plaintiff genuinely needs to share discovery, it may be appropriate to modify a protective order to permit that sharing.

CONCLUSION

The Court should grant State Farm's petition and issue a writ of mandamus directing the district court to vacate its order and issue a new order that does not include a "sharing" provision exposing State Farm's sensitive material to third parties.

Respectfully Submitted,

Mary H. Tolbert

Mary H. Tolbert, OBA #17353
FULLER TUBB BICKFORD WARMINGTON & PANACH, PLLC
201 Robert S. Kerr Avenue, Suite 1000
Oklahoma City, OK 73102
molly.tolbert@fullertubb.com
Tel: (405) 235-2575

John C. Neiman
C. William Courtney
Pro hac vice applications forthcoming
MAYNARD NEXSEN PC
1901 Sixth Avenue North, Suite 1700
Birmingham, AL 35203
jneiman@maynardnexsen.com
wcourtney@maynardnexsen.com
Tel: (205) 254-1000

COUNSEL FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN TORT REFORM ASSOCIATION

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was mailed this 13th day of July, 2026, by depositing it in the U.S. Mail, postage prepaid, or by electronic mail to:

Mithun Mansinghani
LEHOTSKY COHN LLP
629 W. Main Street
Oklahoma City, OK 73102
Attorney for Petitioner

Timila S. Rother
Paige A. Masters
Amanda M. Finch
CROWE DUNLEVY
Braniff Building
324 North Robinson Avenue, Suite 100
Oklahoma City, OK 73102
Attorneys for Petitioner

Andrew J. Morris
MCAFEE & TAFT
A Professional Corporation
Eighth Floor, Two Leadership Square
211 North Robinson Avenue
Oklahoma City, OK 73102
Attorney for Petitioner

Honorable Jeff Virgin
Cleveland County Courthouse
200 South Peters Avenue
Norman, OK 73069
Respondent

J. Revell Parrish
GLASS & TABOR, LLP
1601 36th Avenue NW
Norman, OK 73072
Attorney for Real Parties in Interest

Brad W. Burgess
Colby A. Stephenson
BURGESS & HIGHTOWER LAW FIRM
21 NW 44th Street, Suite 201
Lawton, OK 73505
Attorneys for Real Parties in Interest

Carole Dulisse, Esq.
THE MARR LAW FIRM
3100 NW 149th Street
Oklahoma City, OK 73108
Attorney for Real Parties in Interest

Mary H. Tolbert

Mary H. Tolbert