NO. ____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE EX REL. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

THE HONORABLE THOMAS A. BEDELL, JUDGE OF THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

Respondent.

FILED
MAR 8 2010
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRIGINIA

From the Circuit Court of
Harrison County, West Virginia
Civil Action No. 09-C-67-2

BRIEF OF THE WEST VIRGINIA INSURANCE FEDERATION AS *AMICUS CURIAE* IN SUPPORT OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S PETITION FOR *WRIT OF PROHIBITION*

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INTRODUCTION

The West Virginia Insurance Federation files this brief as *amicus curiae* because the Circuit Court erred in executing a Protective Order that forces insurance companies doing business in West Virginia to choose between complying with a Circuit Court Order or risk penalties, fines, or even suspension by violating the Rules of their regulator, the West Virginia Insurance Commissioner. Not only does this Protective Order directly conflict with the regulation requiring insurance companies to maintain claim files and accompanying records in order to comply with the Commissioner's periodic examinations under W. VA. CODE § 33-2-9 (2009), but it also directly undermines the Commissioner's and companies' efforts to combat insurance fraud.

For these reasons, and those contained herein, the West Virginia Insurance Federation respectfully urges this Court to accept the Petition and, ultimately, to reverse the Circuit Court's Order.

FACTUAL BACKGROUND

Although the Federation incorporates by reference the factual background as outlined by the Petitioner in its *Petition for Writ of Prohibition*, the Federation provides the following inasmuch as it relates to the limited issue in which the Federation has an interest.

In connection with a lawsuit stemming from an automobile accident which killed Lynn Robert Blank in March 2008 and filed against the Estate of Jeremy Thomas and State Farm Mutual Automobile Insurance Company ("State Farm") in the Circuit Court of Harrison County, State Farm repeatedly requested Mr. Blank's medical records or an authorization for the release of his records. Mr. Blank's Estate (the "Estate") refused and provided State Farm with a confidentiality agreement that State Farm deemed overly broad and restrictive.

Although State Farm was amenable to entering a protective order to safeguard the confidentiality of the medical information, the Estate's proposed order would have prohibited scanning the records and maintaining them electronically; required the return or destruction of them at the conclusion of the case; and limited access to them in such a way to inhibit State Farm's and the Insurance Commissioner's anti-fraud efforts.

After attempting to engage in additional discovery, State Farm finally submitted its proposed Protective Order to the Court for consideration. Ultimately, on February 11, 2010, however, the Circuit Court of Harrison County issued the Protective Order at issue here. Although the Protective Order, attached as Exhibit A, orders the Estate to produce medical records, it establishes terms that, by any standard, are unduly restrictive and, importantly, conflict with the West Virginia Insurance Commissioner's Rules and effectively turn the insurance industry's fraud prevention activities on their head.

It is this Order that has caused the West Virginia Insurance Federation and its member insurance companies great concern. For this reason, it files this brief as *amicus curiae.*

STATEMENT OF INTEREST

The West Virginia Insurance Federation ("the Federation") is the state trade association for property and casualty insurance companies doing business in West Virginia. Its members insure approximately eight of every ten automobiles and homes in West Virginia. The Federation is widely-regarded as the voice of West Virginia's insurance industry and has served the property and casualty insurance industry for nearly thirty years. The Federation has a strong interest in promoting a healthy and competitive insurance market in this State to ensure that insurance is both available and affordable to West Virginia's insurance consumers.

The Federation files this brief in support of the Petition filed by State Farm Mutual Automobile Insurance Company to underscore the far-reaching adverse effect that the Circuit Court's protective order will have on the insurance industry and insurance consumers in West Virginia. The Circuit Court's decision places all insurers in the untenable position of opting to violate its Order or comply therewith yet violate established state regulations and the position of the West Virginia Insurance Commissioner. Additionally, standard industry practices designed to curb fraud demand prohibition.

Not only State Farm here, but every insurance company doing business in West Virginia will be affected by this ruling. Indeed, this is an issue of such significance that the insurance community respectfully urges this Court's consideration and prohibition of the Circuit Court's Order.

ARGUMENT

I. Protective Orders of the Type Signed by the Circuit Court Place Insurance Companies in an Impossible Position.

While a Protective Order establishing the terms of disclosure of medical records in and of itself may not be objectionable, orders of the type entered in this case are problematic because they expressly contradict State regulations and impose conflicting requirements on insurance companies. By statute, the members of the West Virginia Insurance Federation are subject to examination by the West Virginia Insurance Commissioner. W. VA. CODE § 33-2-9 (1999). According to that section, each domestic or foreign insurer is subject to a visit by the Insurance Commissioner and examination at least once every five years. W. VA. CODE § 33-2-10 (1999). The Insurance Commissioner is given the authority to promulgate and adopt whatever rules are necessary

to fulfill its obligation to examine each insurer "to effectuate the provisions of this chapter, protect and safeguard the interests of policyholders and the public of this state." *Id.*

In response, the Insurance Commissioner has promulgated and adopted rules that govern examiners and examinations of insurance companies. W. VA. CODE R. § 114-15-1 through -8.3 (2008). Those rules govern not only the procedure for conducting an examination, but also the materials that must be examined and, by extension, the insurer's duty to keep those materials for specified periods of time. Not surprisingly -- given that examinations are conducted at least once every five years -- most relevant records are ordinarily required to be held for at least five years or until the closing date of the period of review for the Commissioner's most recent examination. *See* W. VA. CODE R. § 114-15-4.2 (2008).

Property and casualty insurers are controlled by those same regulations. According to the Insurance Commissioner's rules, "[a] claim file and accompanying records shall be maintained for the calendar year in which the claim is closed plus additional years as set forth in subdivision b, subsection 4.2 of this section." W. VA. CODE R. § 114-15-4.4.a (2008). That section states that a claim file "shall be maintained so as to show clearly the inception, handling, and disposition of each claim." *Id.*; *see also*, W. VA. CODE R. § 114-15-2.4 (2008) (defining "claim file and accompanying records" in the same manner). The rules also state that for property and casualty insurers, the claim file must contain at a minimum:

> "the file or files containing the notice of claim, claim forms, proof of loss or other form of claim submission, settlement demands, accident reports, police reports, adjustors' logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, **medical records**, correspondence to and from insureds and claimants or their representatives, notes, contracts, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the

> investigation, payment or denial of the claim, copies of claim checks or drafts, or check numbers and amounts, releases, all applicable notices, correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity, and any claim manuals or other information necessary for reviewing the claim . . . ."

W. VA. CODE R. § 114-15-4.4.a.1 (2008) (emphasis added).

Just six months ago, the Insurance Commissioner issued an Informational Letter to insurers to remind them of "their obligation to properly document claim files to ensure that the Offices of the Insurance Commissioner ("OIC") can conduct a complete and thorough review of the subject claim by permitting the OIC to fully assess the subject insurer's claim adjusting or processing methods." W. Va. Informational Letter No. 172 (Sept. 2009). The Insurance Commissioner made clear the consequences of failing to comply with the rules: "A violation of this provision can result in a finding by the OIC that the insurer transacted insurance in an illegal, improper, or unjust manner and, accordingly, the OIC may refuse to renew, or may revoke or suspend the license of the insurer or, in lieu thereof, the OIC may order the insurer to pay a penalty set by statute." *Id.* (citing W. VA. CODE R. § 114-14-10 (2006)).

Notably, the Insurance Commissioner even addressed the very issue disputed in this case: the Court's ability to issue a protective order that contradicts the Insurance Commissioner's rules. Specifically, the Insurance Commissioner stated: "The applicable insurance laws and rules demand consistent and comprehensive maintenance of all essential claim records by insurers to ensure that the laws protecting consumers of this state are being followed and that claims are being property resolved. If records necessary for an adequate market conduct review are missing, the OIC will be substantially hindered in carrying out its legislative mandate and thus may subject insurers to penalties." *Id.* Finally, the Insurance Commissioner explained that not only is this information

essential to determining whether an insurer is complying with the applicable laws and rules, but also it is essential for combating insurance fraud. *Id.*

The question for members of the Federation -- for all insurers in West Virginia -- and the question highlighted by the Protective Order entered in this case -- then becomes: which branch of our State government do they ignore? If they follow the terms of the Protective Order and destroy records after the case is concluded, then they clearly have violated the Insurance Commissioner's rules and are subject to revocation, suspension or penalties. That this could and will happen is made clear by the fact that the Insurance Commissioner recognizes that protective orders are being entered that restrict insurers' ability to comply and nonetheless indicates that failure to maintain the records may still subject the insurers to penalties. On the other hand, if insurers follow the Insurance Commissioner's rules and retain the records, then they clearly have violated the terms of the Court's Protective Order and are subject to sanction under the Rules of Civil Procedure. Insurers simply cannot comply with both sets of requirements; it is an impossible, no-win situation.

For that reason, the Federation requests that the Court accept the issue for review and prohibit the enforcement of this Protective Order.

II. This Court Should Permit Only Protective Orders that Uphold the Insurance Commissioner's Rules, Since Those Rules Appropriately Focus on Claims Examination and Insurance Fraud.

This Court should consider the Circuit Court's Protective Order and reject its constrictive language in favor of the Insurance Commissioner's Rules. First, those Rules were designed to allow the Insurance Commissioner to efficiently and effectively examine claims handling. Second, the Rules allow the Insurance Commissioner to examine claims for fraud and prevent it. Finally, the Insurance Commissioner's Rules permit insurers to store claims file data electronically, because to do so can be more efficient for insurers. Allowing individual Circuit

Courts to overturn those Rules on a case-by-case basis opposes the uniformity and efficiency that the rules were intended to encourage. For these reasons, this Court should accept the Protective Order for review and uphold the Insurance Commissioner's Rules to the exclusion of Protective Orders of the type entered below.

A. The Insurance Commissioner's Rules Allow for Consistent Examination of Claims Handling.

This Court should permit Protective Orders covering medical records and insurance claims files, only to the extent that they permit insurers to maintain the claims files as required by the Insurance Commissioner. The Legislature enacted the provisions of the Insurance Code with the intent of creating an "effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner." W. VA. CODE § 33-2-9 (2009). According to the Legislature, the provisions of the Code which create the Insurance Commissioner's obligation to monitor examinations "are intended to enable the commissioner to adopt a flexible system of examinations which directs resources as may be considered appropriate and necessary for the administration of the insurance and insurance-related laws of this state." *Id.*

The system that was created is one that enables both the Commissioner to monitor claims examination and insurers to study and improve their own examination. By requiring insurers to maintain information within their claims files, the Insurance Commissioner has access to records that it can examine for consistency in claims handling, proper claims handling procedures, and compliance with State statutes and regulations. The Insurance Commissioner cannot engage in that same sort of review if the records available in each case are different, because they are controlled by different judges. If one claim is handled as usual -- and thus all records are available -- while

another claim is subject to a protective order -- and thus no records are available or are otherwise limited -- the Insurance Commissioner has inadequate information from which it can determine whether claims are being handled consistently and properly by insurers. It is precisely this situation which the Legislature was trying to prevent by permitting the Insurance Commissioner to promulgate the regulations that she did.

Even further, insurers cannot undertake the same review to determine their own compliance before the Insurance Commissioner is involved. It is unrealistic to assume that insurers can adequately monitor their own claims-handling over time without having access to the records on which claims are based. But lest the issue be confused, it must be clear that the issue is not whether insurers are entitled to or need access to "an electronic copy of the medical records for all eternity in a computer database." Order at 3. The Federation simply asks that the Court uphold the Insurance Commissioner's regulations, which allow both insurers and the Commissioner an opportunity to examine each insurer's claims-handling history on a periodic -- not eternal or even an ongoing -- basis.

It should be equally clear that the issue is not simply about medical records. The Circuit Court gave the insurer access to what it believed the insurer needed access to for the time period during which it believed the insurer needed access. West Virginia has fifty-five counties, divided into thirty-one circuits, and seventy judges. What the Circuit Court of Harrison County believes is necessary is unlikely to be the same as what the Circuit Courts in Putnam, Kanawha, or Ohio Counties believe is necessary. And in fact, the Circuit Court was not even the final arbiter of what medical records were produced: it instructed the Plaintiff's counsel to determine what medical records were relevant and to be disclosed. Order at 4. The Insurance Commissioner's regulations

provide better protection and better review of medical records than would a patchwork of Protective Orders of this nature.

For those reasons, the Federation requests that the Court uphold the Insurance Commissioner's regulations and preclude the type of Protective Order entered in this case.

B. The Insurance Commissioner's Rules Appropriately Permit the Insurance Commissioner to Monitor for Insurance Fraud.

Not only do the Insurance Commissioner's regulations provide for appropriate examination of insurers' files, but also they help insurers and the Commissioner protect against insurance fraud. Both the Insurance Commissioner and insurers use information available in claims files to protect against insurance fraud. That is so, because insurance fraud is discovered when trends reveal it. A single fraudulent claim studied in isolation can be difficult to discover, but when the same scheme is perpetrated in multiple cases, the fraud becomes apparent. That is why the Insurance Commissioner studies trends, and does not simply react to single isolated claims. *See e.g.*, West Virginia Offices of the Insurance Commissioner, 2008 Annual Report, at 111, *available at* http://www.wvinsurance.gov/Default.aspx?tabid=207 (discussing various tools used by the Insurance Commissioner's Fraud Unit to detect fraud by analyzing data across claims).

Insurers use their claims files to conduct the same kind of review of claims against their policies. They review files not to learn an individual claimant's confidential medical information but to compare the claimant's claim with others and ensure that it is not simply one of a series of fraudulent claims. By doing so, they can identify patterns of fraudulent conduct -- fraudulent claims that are submitted using similar factual scenarios or the same parties.

To do so, both insurers and the Insurance Commissioner must have access to more than just the documents that insurers create when a claim is made; they must be able to review

medical records as well. Those records may indicate that a claimant has presented with the same injuries after multiple accidents; that a physician, attorney or other professional is involved in multiple suspicious claims; or that the facts of accidents are described similarly to care providers in different losses. It is crucial to combating insurance fraud that insurers and the Insurance Commissioner be able to review that information over a period of time. As a result, the Federation believes that the system established by the Insurance Commissioner for this very purpose is sufficient -- but not more intrusive or burdensome than is necessary -- to review for insurance fraud.

For those reasons, the Federation requests that the Court permit protective orders of the type issued below only to the extent that they permit the Insurance Commissioner and insurers to conduct the review that the Insurance Commissioner promulgated.

III. Insurers Should be Permitted to Keep the Records Produced in a Claims File Electronically.

Finally, an additional issue raised by the Circuit Court must be addressed: the ability of insurers to electronically store the information created in a claims file. The Circuit Court precluded the insurer involved in this case from creating an electronic copy of the records and storing those records electronically. Order at 3. Because this issue also will be detrimental to insurers' business in West Virginia, the Federation requests that the Court uphold insurers' ability to rely on electronic records.

Not only are insurers already subject to very stringent federal and state regulations governing the protection of individuals' privacy as it relates to the retention of claims and medical information of insureds and claimants, but the Insurance Commissioner also has specifically authorized insurers to maintain the necessary records for its review electronically. *See e.g.*, W. VA. CODE R. § 114-15-4.7 (2008). An insurer that maintains records electronically need only create a

written procedure by which the records are maintained and have that procedure available for the Insurance Commissioner's review. *Id.*

The reasons for this are quite simple. If records are maintained electronically, insurers do not have to store warehouses of paper documents, and the Insurance Commissioner need not physically review volumes of paper and instead can scan the information contained within electronic files. Many insurers have found that electronically-stored information simply can be stored and reviewed more efficiently. Indeed, it is for this reason that many medical records are created and reviewed by physicians in an electronic format. Additionally, the Insurance Commissioner's tools for reviewing claims data are also electronic and analyzing the data within claims files is simpler if the data to be examined is already electronic.

Even if not all insurers will agree that electronic storage of claims data is most efficient, the key for insurers is that they have the option. Again, it cannot be over-emphasized that the Insurance Commissioner was given the duty to promulgate rules and regulations to efficiently monitor insurers' claims-handling procedures and investigate and prosecute insurance fraud, and in response, the Insurance Commissioner allowed for the storage of data electronically. Insurers have complied with the Insurance Commissioner's rules and have made their claims files available in whatever form in which they are stored until now. To allow individual Circuit Courts to overrule the Insurance Commissioner's guidance on the issue -- just as what records are included at all -- would create a patchwork of regulations instead of standard regulations applied uniformly across the industry.

For those reasons, the Federation requests that the Court reverse that portion of the Protective Order which precludes an insurer from storing records electronically.

CONCLUSION

Both the West Virginia Insurance Federation and its member insurers are concerned that the piecemeal approach to protecting medical records that is fostered by protective orders of the type entered by the Circuit Court are detrimental to insurers doing business in West Virginia. When insurers can be fined, penalized, or even suspended for taking actions that they are ordered to take, they inevitably will be forced to evaluate whether to risk these penalties by continuing to do business here. The Federation files this brief to support the Insurance Commissioner's efforts to combat fraud and uniformly review the State's insurers' claims handling procedures and apply the Insurance Commissioner's Rules. It believes that cannot be done if individual plaintiffs or Circuit Courts are permitted to require insurers to follow different rules decided on a case-by-case basis. As a result, the Federation respectfully requests that the Court consider the case for review and preclude the Circuit Court from enforcing the Protective Order at issue.

WEST VIRGINIA INSURANCE FEDERATION

BY DINSMORE & SHOHL, LLP

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IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

CARLA LAYNE BLANK, individually, and
in her capacity as the Personal Representative
of the Estate of Lynn Robert Blank,

Plaintiff,

v.

Civil Action No. 09-C-67-2
Thomas A. Bedell, Chief Judge

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, a foreign corporation,
LANA S. EDDY LUBY, as the Personal Representative
of the Estate of Jeremy Jay Thomas,

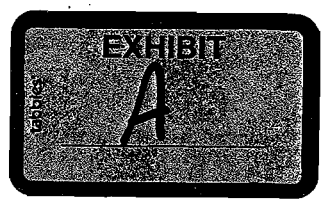
Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE AND ORDERING DISCLOSURE OF MEDICAL RECORDS SUBJECT TO TERMS OF CONFIDENTIALITY

Presently Pending before the Court is Plaintiff's "Motion to Strike Defendant's Request for Production and Requests for Admission," filed on or about January 14, 2010. The Defendant filed its "Response to Plaintiff's Motion to Strike," on January 22, 2010. The Plaintiff then filed her "Response to State Farm's Motion to Amend & Reply to Plaintiff's Motion to Strike," on February 8, 2010.

The Court has reviewed the Motion, Response, Reply, the court file, and pertinent legal authority and **ORDERS** that the Motion to Strike be hereby **DENIED**. Additionally, the Court **ORDERS** that the Plaintiff disclose Carla and Lynn Blank's relevant medical records, subject to the terms of confidentiality identified herein.

The basis of Plaintiff's argument is that when a plaintiff sues their own insurer on



the basis of underinsured motorist ("UIM") coverage, the primary defense is still by the liability insurer of the defendant, and that only that primary defender may participate in discovery. The Plaintiff further argues that because the primary defender[1] did not offer discovery requests (having long ago offered the policy limits), the UIM defender cannot offer discovery requests. However, as the Response points out, that is not the plain reading of State ex rel. Allstate v. Karl, which follows:

> A liability carrier and an underinsured motorist carrier may agree to jointly defend an action by having their respective attorneys participate together in the defense. This does not mean that they may file separate pleadings, indulge in separate discovery, or examine witnesses separately.

Syl. Pt. 9, 190 W. Va. 176, 437 S.E.2d 749 (1993). This clearly means that the liability insurer and the UIM insurer may not badger a plaintiff with double doses of similar pleadings, discovery requests, & etc. It does not mean that the UIM insurer may never file for discovery, especially when, as here, the discovery requests were timely filed and the liability insurer did not file separate requests. Karl is meant to eliminate double litigation of the same claim, not to eliminate a UIM insurer's ability to litigate.

> The language of W. Va. Code, 33-6-31(d), that allows an uninsured or underinsured motorist carrier to answer a complaint in its own name is primarily designed to enable the carrier to raise policy defenses it may have against the plaintiff under its uninsured or underinsured policy.

Karl at Syl. Pt. 14. Here, State Farm is attempting to assert a policy defense based on the Plaintiff's refusal to supply medical records.

Additionally, the Plaintiff's argument that the UIM insurer here is barred from

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[1]Here, both the liability insurer and UIM insurer are State Farm, but both have retained separate counsel, Pullin Fowler and Flanagan for the liability coverage and Martin and Seibert for the UIM coverage.

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participation in the case based on the bifurcation of the first party "bad faith" claim is without merit, based on Karl, *supra*. A review of the language of the jointly offered "Agreed Order of Bifurcation and Stay," entered herein on October 5, 2009, proves this point.

> The Court further finds that the Plaintiff, **as a part of her wrongful death and bodily injury actions, asserts underinsured motorist claims** on her individual behalf and in her capacity as personal representative. . .1. The **bodily injury and wrongful death actions . . . shall proceed** forward to a final adjudication of liability and damages. 2. **Any remaining** direct allegations as to State Farm, including but not limited to any **allegations of 'bad faith' shall be bifurcated and stayed.**

The Court finds that this language clearly indicates that the UIM claims are part of the ongoing case, and not part of the "bad faith" proceedings which have been stayed.

For all of the foregoing reasons, the Court **ORDERS** that the Plaintiff's Motion to Strike be hereby **DENIED**.

However, the Denial of Plaintiff's Motion to Strike alone is not dispositive of this issue, as the dispute over the confidentiality of the requested medical records remains. The Court, *sua sponte*, and especially considering the rapidly approaching trial date in this matter, hereby **ORDERS** the following, that **the Plaintiff disclose all relevant medical records, and that the records are to be disclosed following the terms of confidentiality provided below.**

The Court notes both parties arguments in their respective briefs as to confidentiality. However, State Farm does not need to keep an electronic copy of the medical records for all eternity in a computer database. Additionally, the Plaintiff, at her jury trial, will presumably testify publicly as to the nature and extent of her injuries, so her arguments as to absolute confidentiality are without merit.

Therefore, the following terms of confidentiality shall apply to Carla Blank, (Plaintiff) and Lynn Blank's (Decedent) medical records.[2]

1. Defendants' counsel will not disclose orally or in summary form, any of the Plaintiff's or Decedent's medical records, or medical information, to any person other than their clients, office staff, and experts necessary to assist in this case, and any such person shall be advised of this Protective Order and receive and review a copy of it and be informed that they are bound by the non-disclosure terms and the other provisions of this Protective Order if they receive such protected information. No person shall scan or store any of Plaintiff's or the Decedent's medical records or medical information by any method, including but not limited to, computerized storage, filming, photographing, microfiche or other similar method. If any such protected documents or information need to be part of any pleading, they shall be filed with such pleading under seal pursuant to this Order and also be furnished to this Court with each document marked "confidential."

Provided, however, Defendants' counsel may disclose, either orally, in writing, or by paper copies, such information to the Defendants' experts and insurance carrier, but any said expert or insurance carrier or any other person receiving said information, shall, pursuant to this Order, receive a copy of this Protective Order and agree in writing to be bound by all of the terms of this Protective Order, including the non-disclosure and non-retention of such material

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[2]The Plaintiff's counsel has the burden of determining which medical records are relevant to the accident, including any potentially relevant preexisting conditions, and disclosing the same under the good faith principals of the rules of discovery.

as set forth herein, and be subject to the jurisdiction of this Court for enforcement purposes; a copy of each such written agreement shall be provided to Plaintiff's counsel upon execution by any person receiving such protected information and in the even any expert receiving such medical information is an undisclosed, non-testifying expert, then in that event, the attorney who provided such information to the undisclosed non-testifying expert shall maintain in his or her office files, the executed written agreement even after the return or destruction of the protected information to Plaintiff's counsel and the final dismissal of this case.

2. Also, upon conclusion of this case, all medical records, and medical information, or any copies or summaries thereof, will either be destroyed with a certificate from Defendants' counsel as an officer of the Court that the same has been done, or all such material will be returned to Plaintiff's counsel without retention by Defendants' counsel or any other person who was furnished such materials and information pursuant to the terms of this Protective Order. Provided however should Defendants' counsel desire to retain a copy of the protested medical records produced in this case, the same shall be permitted as long as those protected medical records are maintained in a sealed manner in Defense Counsel's file and not used for any other purpose whatsoever except upon further order of this Court or in response to lawful process after notice to the protected person, or in response to a lawful order of another Court with jurisdiction, or upon written consent of the protected person whose medical records and information is protected herein.

3. Also, any medical records previously received by or on behalf of any party in this case or any other person including an employee of any insurance carrier,

even if received prior to the Court's ruling on this Protective Order, are protected regarding the confidentiality and privacy of such records in accordance with the Court's ruling herein.

Accordingly, the Court hereby **ORDERS** that the terms of Confidentiality enumerated above bind all parties receiving medical records and medical information in this case.

The Clerk of this Court is **ORDERED** to send copies of this Order to the following:

David Romano, Esq.
Romano Law Office
363 Washington Ave
Clarksburg, WV 26301
Counsel for Plaintiff

E. Kay Fuller, Esq.
Martin & Seibert, L.C.
P.O. Box 1286
Martinsburg, WV 25402
Counsel for Defendant State Farm

Tiffany R. Durst, Esq.
Pillin, Fowler, Flanagan, Brown & Poe, PLLC
2414 Cranberry Square
Morgantown, WV 26508
Counsel for Defendant S. Eddy Luby

ENTER: February 11, 2010

Thomas A. Bedell, Chief Judge

STATE OF WEST VIRGINIA
COUNTY OF HARRISON, TO-WIT:

I, Donald L. Kopp II, Clerk of the Fifteenth Judicial Circuit and the 18th Family Court Circuit of Harrison County, West Virginia, hereby certify the foregoing to be a true copy of the ORDER entered in the above styled action on the 11 day of February, 2010.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix Seal of the Court this 11 day of February, 20 10.

Donald L. Kopp II, CM
Fifteenth Judicial Circuit & 18th Family Court
Circuit Clerk
Harrison County, West Virginia

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***Brief of the West Virginia Insurance Federation as Amicus Curiae*** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed to the following:

David Romano
Romano Law Office
363 Washington Avenue
Clarksburg, WV 26301

E. Kay Fuller
Martin & Seibert, L.C.
P.O. Box 1286
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