

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA  
CIVIL DIVISION

STATE FARM FLORIDA INSURANCE  
COMPANY,

Plaintiff,

vs.

CASE NO.: \_\_\_\_\_

THE FLORIDA OFFICE OF INSURANCE  
REGULATION,

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

Plaintiff, State Farm Florida Insurance Company (“State Farm”), pursuant to Florida Rule of Civil Procedure 1.610; the Declaratory Judgment Act, Chapter 86, Fla. Stat.; the Florida Uniform Trade Secrets Act, Chapter 688, Fla. Stat.; sections 812.081 and 815.045, Fla. Stat.; and section 624.4213, Fla. Stat., seeks: (i) a declaratory judgment that certain State Farm documents and information produced to the Florida Office of Insurance Regulation (“OIR” or “Office”) are trade secrets and exempt from Florida’s Public Records Act and (ii) permanent injunctive relief enjoining OIR from releasing the protected trade secret documents and information to any third party, particularly in the form of a Quarterly Supplemental Report (QSR) that becomes instantly available for public inspection upon filing. In support of the relief sought, State Farm states:

**Jurisdiction and Venue**

1. This is an action for declaratory judgment and permanent injunctive relief. This Court has jurisdiction pursuant to sections 86.011 and 26.012, Fla. Stat.

2. Under section 47.011, Fla. Stat., venue in this Court is proper because OIR is a state agency with its principal headquarters located in Leon County, Florida.

### **Parties**

3. Plaintiff State Farm is a Florida corporation which holds a license under the Florida Insurance Code as a property and casualty insurance company in Florida.

4. Defendant OIR is a state agency charged with regulatory oversight of insurance companies transacting the business of insurance in Florida.

### **General Allegations**

5. In order to comply with the requirements of subsection 624.424(10), Fla. Stat., and Rule 69O-137.009, F.A.C., State Farm is required to file data with the Office of Insurance Regulation once a quarter providing great detail about its business in Florida. Much if not all of this data is trade secret information. The information to be filed is often referred to as “QUASR” and should include the following:

(10) Each insurer or insurer group doing business in this state shall file on a quarterly basis in conjunction with financial reports required by paragraph (1)(a) a supplemental report on an individual and group basis on a form prescribed by the commission with information on personal lines and commercial lines residential property insurance policies in this state. The supplemental report shall include separate information for personal lines property policies and for commercial lines property policies and totals for each item specified, including premiums written for each of the property lines of business as described in ss. 215.555(2)(c) and 627.351(6)(a). The report shall include the following information for each county on a monthly basis:

- (a) Total number of policies in force at the end of each month.
- (b) Total number of policies canceled.
- (c) Total number of policies nonrenewed.
- (d) Number of policies canceled due to hurricane risk.
- (e) Number of policies nonrenewed due to hurricane risk.
- (f) Number of new policies written.
- (g) Total dollar value of structure exposure under policies that include wind coverage.
- (h) Number of policies that exclude wind coverage.

6. The Florida Legislature has clearly stated that protecting business trade secrets is an important public policy of the state of Florida. As a result, it expressly concluded that trade secret information is exempt from the public records law. As noted in the following quote, the policy was so important as to make it a criminal offense to release trade secret information. Section 815.045, Fla. Stat., provides that:

The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. *The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection.* Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets. (Emphasis added)

7. Under the provisions of section 624.424(10), Fla. Stat., State Farm is required to make a QUASR filing on a quarterly basis with the next one due on May 15, 2014.

8. State Farm has been complying with this reporting requirement since 2004. In May of 2007, State Farm requested a preliminary injunction to protect the information provided in the QUASR at that time. The Court found that at that time State Farm had not met all the requirements for entry of a temporary injunction and the motion for temporary injunction was denied. Rather than moving forward with the case, State Farm voluntarily dismissed its complaint.

9. During that time, the company submitted QUASR reports in compliance with subsection 624.424(10), Fla. Stat., and Rule 69O-137.009, F.A.C. However, the company was writing very limited new business during this time period.

10. More recently, however, State Farm decided to write additional homeowners business in the Florida marketplace. State Farm associates spent valuable time and resources to determine how to best re-enter the market and have gone to great expense to develop its plans for identifying and rating risks. Because Florida is a competitive marketplace, many competitor insurers would like to have access to State Farm's current data contained in the QUASR reports, thereby potentially undermining the value of this work to State Farm. Having access to the current, specific level of detail that is included in the report gives them valuable information to use to undermine State Farm's marketing advantages.

11. Moreover, State Farm began writing additional new homeowners business in the first quarter of 2014 and the QUASR report due on May 15, 2014 would require disclosure of information directly related to this new business effort.

12. State Farm's data and information used for its QUASR report is confidential and proprietary business information that is trade secret information under the definitions in sections 624.4213, 688.002(4), and 812.08, and as a result it should not be disclosed publicly by OIR. The information to be reported has "independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other people who can obtain economic value from its disclosure." This information if disclosed publicly would identify those areas of the state of Florida that State Farm identifies as being desirable areas to market and write new business and provide competitors with valuable detail about State Farm's customers in those areas. State Farm has an interest in protecting data below the state

level that would provide competitors with valuable information about customers enabling them to target particular risks or areas for marketing and underwriting. State Farm has developed sophisticated techniques and methods for identifying risks that fit well within its portfolio and permit it to write a balanced book of business in the state with reasonable risk patterns and opportunity for a fair rate of return. Competitors who acquire the information in State Farm's QUASR reports may use that information to identify the areas of the state or types of risks that State Farm has determined are good risks. Competitors would attain valuable information regarding the competitiveness of rates in an area, where they can take underwriting risks and where they can implement marketing strategies based on State Farm's data. The acquisition of such information by competitors would be detrimental to State Farm. As a result, this data is trade secret information under the provisions of sections 624.4213, 688.002(4) and 812.081, and trade secret information is exempt from the public records provisions of Chapter 119, Fla. Stat. See, section 815.04(3), Fla. Stat.

13. Sections 624.4213 and 815.045, provide State Farm and other insurance companies a procedure for protecting the confidentiality of trade secret documents that must be filed with the OIR. They also provide the employees of OIR with a way of dealing with claims of trade secret protection without putting them at risk for improperly releasing or protecting data and exposing themselves to sanctions for failing to comply with the public records law and for failing to protect confidential trade secret information. Section 624.4213 puts the burden of deciding on a court so long as State Farm follows the procedure in the statute. State Farm has complied with those procedures by marking the documents trade secrets, identifying them as such in the cover letter, and providing the required affidavit.

14. At the time this complaint was filed and served there were no public records requests filed asking for State Farm's QUASR report to be filed. However, in conversations between representatives of State Farm and representatives of OIR, it has been made clear that OIR does not consider the information contained in State Farm's QUASR report to be confidential and intends to release it to the public. In fact, the OIR has advised that State Farm must file the information through a web based portal that immediately releases the data available to the public.

15. Instead, State Farm has timely provided the information to OIR on a diskette marked as confidential trade secret information. This information was sent by overnight mail on May 14, for delivery on May 15, 2014. Rule 690-137.009(4), F.A.C., provides: "The information may be submitted either in hard-copy form or on a computer diskette using a template developed by the Office in a specified software. This form or diskette may be obtained from the Property & Casualty Solvency Section, Bureau of P & C Solvency, Market Conduct & Surplus Lines. State Farm has requested the specific computer diskette to be used, but has been informed such a diskette does not exist. In fact, the Office has advised that the only acceptable way to file the data is through the Office's web portal making it immediately public. Since Rule 690-137.009 allows for a method other than electronic on line filing, State Farm has timely provided the required information in a computer diskette to the OIR with the appropriate trade secret labeling and trade secret affidavit. (The Affidavit is attached as Exhibit A.)

16. Section 624.4213, Fla. Stat., addresses the procedure by which any person who is required to submit documents or other information to the OIR can assert a claim of trade secret protection for the documents or other information. State Farm also asserts that the statute

provides for the *only* procedure for OIR to release information properly marked as trade secret under the statute.

17. While there is no person or entity filing a public records request, OIR should follow the procedure contained in this statute and notify State Farm in writing that it does not consider the report trade secret and intends to release or use the data in a public format. State Farm must then be given 30 days to seek protection from a court.

18. OIR has notified State Farm orally on May 7, 2014 that it does not consider the QUASR information to be trade secret and subject to protection from public disclosure. As a result, State Farm's data, clearly defined as a trade secret, will become available to State Farm's competitors, causing harm to State Farm and unjust enrichment to others.

19. Further, employees of OIR are faced with the difficult choice of implementing what they assume to be their statutory duty, including State Farm's QUASR data in the published QSR, and violating section 815.045, Fla. Stat., which clearly prohibits the disclosing of trade secret information by state employees.

20. Pursuant to Section 815.045, Fla. Stat., trade secrets in the possession of a state agency, such as OIR, that meet the definition of section 812.081, Fla. Stat., are exempted from disclosure under Florida's Public Records Act.

21. The information and data contained in the QUASR filing meet the definition of a trade secret under Section 688.002, Fla. Stat., as well, because, as outlined above:

a. The reports are a compilation of information and business practices that derive actual, independent economic value from not being generally known to other persons who can obtain economic value from its disclosure or use;

b. The reports are a compilation of information and methods that are not readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

c. The reports have been and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

22. The QUASR filing is also a trade secret under Section 812.081(1)(c), Fla. Stat.:

(c) "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use or is used, in the operation of a business which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

23. The filing required by State Farm is commercial information that includes a customer list and other valuable information.

#### **COUNT I: DECLARATORY JUDGMENT**

24. This is an action for declaratory and supplemental relief pursuant to Chapter 86, Fla. Stat.



25. Paragraphs 1-23 are incorporated by reference.

26. Section 624.4213, Fla. Stat., requires a company such as State Farm, upon notification by the OIR of the receipt of a public records request for documents or information that are designated a trade secret, to “file an action in circuit court seeking a determination whether the document in question contains trade secrets and an order barring public disclosure of the document.”

27. State Farm files this action in accordance with sections 668.003 and 624.4213, because it is in need of a judicial declaration that the documents in question contain trade secrets and cannot be disclosed. The court should enjoin OIR from publicly disclosing such documents.

WHEREFORE, State Farm respectfully requests that this Court take jurisdiction of this cause and grant the following relief:

A. Declare that State Farm’s QUASR data and report, which were submitted to the OIR under a claim of trade secret, are in fact trade secrets under sections 812.081 and 688.002, Fla. Stat. and cannot be made public;

B. Declare that State Farm’s QUASR data and report, which were submitted to the OIR under a claim of trade secret, are exempt from public disclosure under Florida’s Public Records Act pursuant to Sections 624.4213 and 815.045, Fla. Stat.; and

C. Award to State Farm any and all additional and supplemental relief this Court may deem just and equitable.

**COUNT II: INJUNCTION**

28. This is an action for permanent injunctive relief.

29. Paragraphs 1-23 are incorporated by reference.

30. The OIR's public disclosure of State Farm's QUASR information, which was submitted to the OIR under a claim of trade secret, will cause State Farm immediate and irreparable injury because public dissemination of the documents and information will destroy the trade secret value of the compiled information which gives State Farm a competitive advantage in the Florida property insurance market.

31. State Farm has no adequate remedy at law that could prevent the disclosure of trade secrets and irreparable injury to State Farm. The only adequate remedy available to State Farm is the entry of permanent injunctive relief barring OIR from disclosing trade secret documents and information. Injunctive relief to prevent the actual or threatened disclosure of trade secrets is the equitable remedy provided for in sections 624.4213 and 688.003, Fla. Stat.

32. Based on the statutory definition of trade secrets, the reasonable efforts undertaken by State Farm to preserve the confidentiality of the trade secret material it filed with OIR, and the statutory exemption under the Public Records Act afforded to trade secrets, State Farm has a clear legal right to the relief requested and there is a substantial likelihood that Plaintiff will prevail in this action for injunctive relief.

33. Entering the injunction will serve the public interest in that the Florida Legislature has found that the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure and that the public's ability to scrutinize and monitor agency action is not diminished by non-disclosure of trade secrets. § 815.045, Fla. Stat.

WHEREFORE, State Farm respectfully requests that this Court take jurisdiction of this cause and the parties and grant the following relief:

A. Enter a permanent injunction enjoining OIR from disclosing, in response to a Public Records Act request, the State Farm QUASR data and report, that are trade secret and which were submitted to the OIR under a claim of trade secret; and

B. Award to State Farm any and all additional relief this Court may deem just and equitable.

s/ David A. Yon

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ATTORNEYS FOR PLAINTIFF

STATE FARM INSURANCE COMPANY

**Notice and Affidavit of Trade Secret  
Filed Pursuant to Florida Statutes 624.4213**

My name is Jim Larson and I am employed by the State Farm Mutual Automobile Insurance Company as Assistant Vice President - Accounting to provide certain financial administration services to this company and its affiliated insurers, including State Farm Florida Insurance Company (hereinafter "State Farm Florida"). I am also an Assistant Secretary – Treasurer of State Farm Florida. My responsibilities include the statistical reporting function that provides data to external statistical agencies including data contained in the QUASR filing. This affidavit is included as a part of this filing. I am also responsible for identifying within this filing the documents that State Farm Florida considers to be trade secret and for taking actions I believe appropriate to preserve the confidentiality of those documents. Pursuant to those responsibilities, I hereby file this Notice of Trade Secret and Affidavit as required by Florida Statutes 624.4213.

The documents which State Farm Florida considers to be trade secret are separated from the non-trade secret information. The information is included in this filing only because it is required by the Florida Office of Insurance Regulation (hereinafter "OIR"), and in reliance on Florida law relating to confidentiality of trade secret information. The filing contains county level data for residential policies and is included in the QUASR report provided via disk. OIR can access the information, with the explicit understanding that such information will not be disclosed outside of the OIR without either written permission of State Farm Florida or order of court. Each page of all confidential portions is labeled "Trade Secret."

I hereby certify under oath that the following statements are true concerning all the documents for which State Farm Florida (hereinafter "my company") claims trade secret status, as provided by the above statute, and as further protected by Florida law generally:

1. My company considers this information a trade secret that has value and provides an advantage or an opportunity to obtain an advantage over those who do not know or use it.
2. My company has taken measures to prevent the disclosure of the information to anyone other than those who have been selected to have access for limited purposes, and my company intends to continue to take such measures.
3. The information is not, and has not been, reasonably obtainable without our consent by other persons by use of legitimate means.
4. The information is not publicly available elsewhere.

Made under oath this 6<sup>th</sup> day of May, 2014.

Printed name: Jim Larson

Signature: *Jim Larson*

Title: Assistant Vice President - Accounting

**Notarization of Sheryl Simkins**

STATE OF Illinois

COUNTY OF McLean

Sworn to (or affirmed) and subscribed before me this 6<sup>th</sup> day of May, 2014, by Jim Larson, personally known to me.

Notary Signature *Sheryl E. Simkins*

My commission expires: 08/09/2014

