

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

OLYMPUS INSURANCE COMPANY,

Case No.: 2024-CA-000338

Plaintiff

v.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES,

Defendant.

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION FOR
PERMANENT INJUNCTION**

Plaintiff, OLYMPUS INSURANCE COMPANY, ("OIC"), by and through undersigned counsel, respectfully moves for summary judgment and for a permanent injunction.:

- a) Declaring that the claim file and underwriting materials submitted by Olympus contain proprietary business information / trade secrets and are thus confidential and exempt from Florida's Public Records Act; and
- b) Ordering permanent injunctive relief enjoining DFS from releasing the documents in response to the public records request, or otherwise.

As will be shown below, there are no genuine issues of material fact for trial and Plaintiff is entitled to judgment as a matter of law pursuant to Florida Rules of Civil Procedure 1.510.

In support of its Motion, Olympus relies upon the following:

- A. Plaintiff's Amended Complaint;
- B. Defendant's Answer to Amended Complaint;
- C. Affidavit of Kyle Herbert (attached); and

D. Statement of Undisputed Material Facts (set forth below).

STATEMENT OF UNDISPUTED FACTS

1. Olympus is a Florida corporation that is licensed by the Office of Insurance Regulation as a property and casualty insurer under the Florida Insurance Code.
2. The Department of Financial Services is a Florida agency that, among other things, regulates the business and transaction of insurance in Florida. The Department's headquarters are in Leon County, Florida.
3. As part of an investigation of complaint Tip No. T23-5092/ Case No.23-2926 (the "Case"), on December 8, 2023, Olympus submitted its entire claim file, including redacted copies of certain records that Olympus believes are exempt and protected from disclosure under §624.4213, Florida Statutes, based on trade secret. The documents were marked as "trade secret" upon submission and included an appropriate affidavit. (The marked documents are hereinafter referred to as "the Documents.").
4. Section 624.4212, Florida Statutes, defines "proprietary business information" as:
information, regardless of form or characteristics, which is owned or controlled by an insurer, or a person or an affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and which:
 - (a) Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and that the information has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
 - (b) Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and
 - (c) Includes:

1. Trade secrets as defined in s. 688.002 which comply with s. 624.4213.
2. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
3. The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
4. Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
5. Internal auditing controls and reports of internal auditors.

§624.4212(1), Fla. Stat.

5. Section 624.4212(2) exempts “proprietary business information” contained within DFS files from public disclosure.
6. Section 812.081, Florida statutes, defines “trade secret” as:

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 and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes 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.

§ 812.081(1)(c), Fla. Stat.

6. Likewise, Florida Uniform Trade Secrets Act, sections 688.00-688.009, Florida Statutes, defines “trade secret” as:

information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

7. The Act further provides for injunctive relief against disclosure:

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

8. Section 081 prohibits, inter alia, making a copy without authority:

(2) Any person who, with intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his or her own use or to the use of another, steals or embezzles an article representing a trade secret or without authority makes or causes to be made a copy of an article representing a trade secret commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

9. Section 815.045, Florida Statutes, noting that it is a felony to disclose trade secrets, provides an express, general exemption from Chapter 119 for trade secrets (as defined in 812.081) held by a state agency:

Trade Secret Information - 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.

§ 815.045, Fla. Stat.

10. The Documents contain Plaintiff's trade secrets and other proprietary business information, inasmuch as they contain information about (without limitation) business plans, financial projections, affiliation agreements, and other matters that derive independent economic value, actual or potential, from not being generally known, to and not being readily ascertainable by proper means, by other persons whom can obtain economic value from its disclosure or use, and the Documents are the subject of efforts that are reasonable under the circumstances to maintains their secrecy.
11. Jeremy Berman submitted DFS Public Records Request No.:3210-2023 for the records contained in DIFS Fraud Tip No. 23-5092 & Case No.: 23-2926.
12. In accordance with section 624.4213(2), by letter dated February 12, 2024, the Department's Division of Investigative and Forensic Services notified Olympus that the Department received a public records request for all records submitted by Olympus relative to the Case, including those that Olympus claims are protected trade secret.
13. There is a bona fide dispute between Plaintiff and DFS with respect to the status of the Documents, to wit: whether the Documents are releasable as public records or are instead exempt as trade secrets or proprietary business information.
14. Plaintiff asserts that the documents are not subject to release as public records; however, DFS has stated that the documents will be released unredacted absent a declaration that the Documents are not subject to release.

15. The issue before the court is whether the Documents are to be released as public records or are exempt from disclosure.
16. Plaintiff owned the Documents described above and owns the trade secrets and proprietary business information therein.
17. Absent an order barring public disclosure of the Documents, DFS has threatened to release the Documents to third parties.

MEMORANDUM OF LAW

I. Summary Judgment Standard

As of May 1, 2021, all Florida courts shall construe and apply “[t]he summary judgment standard provided for in [Rule 1.510(c)] in accordance with the federal summary judgment standard articulated in *Celotex Corp. v. Cartett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).” *In re: Amendments to Florida Rule of Civil Procedure 1.510*, 309 So. 3d 192 (Fla. 2020). The Florida Supreme Court has adopted this standard to conform Florida’s summary judgment procedures with the federal procedures for summary judgment. *Id.* Specifically, the Florida Supreme Court said, “[w]e agree with the [United States] Supreme Court that ‘[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of [our rules] as a whole.’” *Id.* (citing *Celotex Corp.*, 477 U.S. at 327 (alterations in original)). The entry of summary judgment is mandated when, “after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322.

Pursuant to the amendments to Florida Rule of Civil Procedure 1.510, “the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” See Fla. R. Civ. P. 1.510(a) (emphasis added). Significantly, under the new rule, the correct test for the existence of a genuine factual dispute is no longer “the slightest doubt” being raised by the non-movant, but instead, whether “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *In re Amendments to Florida Rule of Civil Procedure 1.510*, 309 So. 3d at 193 (quoting *Anderson*, 477 U.S. at 248. “When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.” *Id.* (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007))).

The party moving for summary judgment “always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” See *Celotex Corp.*, 477 U.S. at 323 (quoting Fed. R. Civ. P. 56(c)). Moreover, where, as here, the movant does not bear the burden of persuasion at trial, the movant can obtain summary judgment without having to provide affirmative evidence to disprove the non-movant’s case. Instead, the moving party can satisfy its initial burden of production in either one of the following two ways: “[I]f the nonmoving party must prove X to prevail [at trial], the moving party at summary judgment can either produce evidence that X is not so or point out that the nonmoving party lacks the evidence to prove X.” *Bedford v. Doe*, 880 F.3d 993, 996-97 (8th Cir. 2018). “A movant for

summary judgment need not set forth evidence when the non-movant bears the burden of persuasion at trial.” *Wease v. Ocwen Loan Servicing, L.L.C.*, 915 F.3d 987, 997 (5th Cir. 2019)

Because of the rule change, Florida courts must now apply the federal standard, which does not require that the moving party support its motion with affidavits or other similar materials negating the opponent's claim. *Celotex Corp*, 477 U.S. at 323. With respect to the moving party’s burden, the United States Supreme Court in *Celotex* found as follows:

On the contrary, [the summary judgment rule] which refers to “the affidavits, if any”, suggests the absence of such a requirement. And if there were any doubt about the meaning of [the rule] in this regard, such doubt is clearly removed by [the rule], which provide that claimants and defendants, respectively, may move for summary judgment “with or without supporting affidavits.” The import of these subsections is that, regardless of whether the moving party accompanies its summary judgment motions with affidavits, the motion may and should be granted as long as whatever is before the [trial] court demonstrates that the standard for the entry of summary judgment, as set forth in [the rule], is satisfied.

See id. at 323-324 (emphasis added).

Once the moving party has met its burden, the summary judgment rule “requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to interrogatories, and admissions of file,’ designate ‘specific facts showing that there is a genuine issue for trial.’” *Id.* at 324 (quoting Fed. R. Civ. P. 56(e)). The nonmoving party need not present evidence in a form necessary for admission at trial; however, he may not merely rest on his pleadings. *Id.* at 324. “[T]he plain language of [the rule] mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Id.* at 322.

A dispute is genuine only “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. “[T]he judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a

genuine issue for trial.” *Id.* at 249. The trial court’s guide is the same standard necessary to direct a verdict: “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Id.* at 251-52; *see also Bill Johnson’s Restaurants, Inc. v. N.L.R.B.*, 461 U.S. 731, 745 n.11 (1983). The court must “view the evidence presented through the prism of the substantive evidentiary burden,” so there must be sufficient evidence on which the jury could reasonably find for the plaintiff. *Anderson*, 477 U.S. at 254; *see also Cottle v. Storer Communication, Inc.*, 849 F.2d 570, 575 (11th Cir. 1988). Nevertheless, credibility determinations, the weighing of evidence, and the drawing of inferences from the facts are the function of the jury, and therefore the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. *Anderson*, 477 U.S. at 255. The non-movant need not be given the benefit of every inference but only of every reasonable inference. *Brown v. City of Clewiston*, 848 F.2d 1534, 1540 n.12 (11th Cir. 1988).

II. Argument

In accordance with Section 626.989(5), Florida Statutes, evidence submitted in connection with an investigation being conducted by the Department is confidential and exempt from disclosure until the investigation is completed. However, “[a]fter an investigation is completed or ceases to be active, portions of records relating to the investigation shall remain exempt from the provisions of s. 119.07(1) if disclosure would:

- (a) Jeopardize the integrity of another active investigation;
- (b) Impair the safety and soundness of an insurer;
- (c) Reveal personal financial information;
- (d) Reveal the identity of a confidential source;
- (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- (f) Reveal investigative techniques or procedures. Further, such papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to discovery until the investigation is completed or ceases to be active. Office, department, or division investigators shall not be subject to subpoena in civil actions by

any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the division.

§626.989(5)(a)-(e), Fla. Stat.

The records redacted by Olympus, which consist of claim handling materials, including, without limitation, inspection reports, internal notes, internal guidelines, internal emails/communications, internal activity logs, as well as underwriting material identifying Olympus' financial relationship with third parties, constitute trade secret information within the meaning of section 688.02, Florida Statutes.

Claim handling materials or training materials as well as its underwriting materials or guidelines are afforded additional protection from discovery as confidential proprietary information pursuant to Florida Statutes §90.506, which provides:

A person has a privilege to refuse to disclose, and to prevent other persons from disclosing, a trade secret owned by that person if the allowance of the privilege will not conceal fraud or otherwise work injustice.

§90.506, Fla. Stat.

Information on underwriting premiums and insurance rates are proprietary. They constitute pricing information, which is the key to Olympus' business and the method by which it delivers competitive premiums to its customers. If such information is revealed to the public, Olympus may lose its claim to trade secret status in future matters, some of which may be commercial/contractual and unrelated to this case or bad faith claims. If publicly disclosed, this information could benefit Olympus' competitors and be detrimental to Olympus.

Similarly, the claim file log notes and internal communications reflect Olympus' method of claims handling/management, including the manner in which the information is compiled and patterned that is unique to Olympus, therefore, meeting the legal definition of a trade secret. The

files also contain information on how the claims consultants perform their work pursuant to Olympus' own general business operations. When combined with the entire claim file, these operations are all part of what helps Olympus do its business in a competitive insurance market. Olympus should be permitted to keep this information confidential.

A breach of confidentiality by disclosing confidential information is irrevocable; it cannot be taken back, and it cannot be cured with monetary damages. Federal courts have also recognized the significant potential damage that an insurance company could suffer if its confidential claims handling information were released without the protection. See e.g., *Cohen v. Metropolitan Life Ins. Co.*, No. 00CV6112, 2003 WL 1563349 (S.D.N.Y. Mar. 26, 2003) (finding that the "Best Practices Manual" and "Claims Management Guidelines" of the defendant insurance company contained "confidential information, valuable to [the defendant] and potentially valuable to its competitors who could take unfair advantage of [the defendant's] substantial analytical and experiential investment by using the material to achieve efficiencies in their claims handling operations, and that the material thus warrants appropriate protection"); *Republic Services, Inc. v. Liberty Mut. Ins. Companies*, No. 03CV 494, 2006WL1635655 (E.D. Ky. June 9, 2006) (holding that the defendant insurance companies' claims handling and training manuals "have independent economic value to [the defendant] due to . . . their confidential nature, . . . the time, effort and expense . . . invested in creating these materials . . . and . . . the fact that competitors in the . . . industry do not disclose information about their claims handling policies and procedures to one another" and finding that issuance of a protective order was appropriate); *Hamilton v. State Farm Mut. Auto. Ins. Co.*, 204 F.R.D. 420 (S.D. Ind. 2001) (issuing protective order as to the defendant insurance company's claims handling materials); *Adams v. Allstate Ins. Co.*, 189 F.R.D. 331 (E.D.

Pa. 1999) (ordering that the information in the defendant insurance company's claims manuals and training materials were to be kept confidential).

Federal courts have also recognized the significant potential damage that an insurance company could suffer if its confidential claims handling information were released without the protection *See e.g., Cohen v. Metropolitan Life Ins. Co.*, No. 00CV6112, 2003 WL 1563349 (S.D.N.Y. Mar. 26, 2003) (finding that the "Best Practices Manual" and "Claims Management Guidelines" of the defendant insurance company contained "confidential information, valuable to [the defendant] and potentially valuable to its competitors who could take unfair advantage of [the defendant's] substantial analytical and experiential investment by using the material to achieve efficiencies in their claims handling operations, and that the material thus warrants appropriate protection"); *Republic Services, Inc. v. Liberty Mut. Ins. Companies*, No. 03CV 494, 2006WL1635655 (E.D. Ky. June 9, 2006) (holding that the defendant insurance companies' claims handling and training manuals "have independent economic value to [the defendant] due to . . . their confidential nature, . . . the time, effort and expense . . . invested in creating these materials . . . and . . . the fact that competitors in the . . . industry do not disclose information about their claims handling policies and procedures to one another" and finding that issuance of a protective order was appropriate); *Hamilton v. State Farm Mut. Auto. Ins. Co.*, 204 F.R.D. 420 (S.D. Ind. 2001) (issuing protective order as to the defendant insurance company's claims handling materials); *Adams v. Allstate Ins. Co.*, 189 F.R.D. 331 (E.D. Pa. 1999) (ordering that the information in the defendant insurance company's claims manuals and training materials were to be kept confidential).

The undisputed material facts and affidavit of Kyle Hebert submitted with the Documents show that Plaintiff's information submitted to DFS meet the definitions of trade secret contained

in section 812.081. Consequently, the information is exempt from public records disclosure. The submitted compilation of information provides Plaintiff with an advantage or ability to obtain an advantage over those who do not know the information, and Plaintiff actively takes measures to prevent the information from being publicly available. Thus, Plaintiff's submitted information meets the trade secret definition set out in section 812.081(1)(c) and is exempt from public records disclosure.

III. Conclusion

Plaintiff is entitled as a matter of law to a judgment declaring its information submitted during the investigation of Tip No. T23-5092/ Case No.23-2926 is exempt from public disclosure and granting of a permanent injunction precluding DFS from disclosing the information.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to FL Rule 1.202(6), I hereby certify that conferral prior to filing is this Motion is not required.

/s/ Lisa Larmond
Lisa Larmond, Esq.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail via the Florida Courts E-Filing Portal on September 9, 2025, upon: Nathan Koch, Esq., Office of the General Counsel *Attorneys for Defendant*, 200 E. Gaines St., Tallahassee, FL 32399, Service E-Mails: Nathan.Kock@myFloridaCFO.com; Jeremy Berman, Intervenor, 18148 Deep Passage Lane, Fort Myers, FL 33931, bermanjeremy@aol.com.

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By: */s/ Lisa Larmond*
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AFFIDAVIT OF OLYMPUS INSURANCE COMPANY

STATE OF FLORIDA)
)SS
COUNTY OF DUVAL)

1. My name is KYLE HERBERT and I am the Special Investigations Unit Manager for OLYMPUS INSURANCE COMPANY (“Olympus”).

2. I am over the age of eighteen (18) and the following statements are true, correct, and made pursuant to my personal knowledge and my review of all documents which were kept in the ordinary course of business and as the Corporate Representative in this matter and as it relates to the claim filed by Jeremy Berman (claim number 22FLHOV0004316), related to the property located at 18148 Deep Passage Lane, Fort Myers Beach, FL 33931.

3. Olympus considers all documents attached hereto as Exhibit A, 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.

4. Olympus 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 Olympus intends to continue to take such measures.

5. The information is not, and has not been, reasonably obtainable without Olympus’ consent by other persons by use of legitimate means.

6. The information is not publicly available elsewhere.

FURTHER AFFIANT SAYETH NOT.

DATED this 8th day of December, 2023.

This document is being sworn to and e-signed in accordance with Florida Statutes 92.525 and 668.50(7)(d). “Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.”

Kyle Herbert

KYLE HERBERT
Olympus Insurance Company
Special Investigations Unit Manager