

PRESS RELEASE

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**DRI –*The Voice of the Defense Bar* Files Amicus Brief in U.S. Supreme Court Case
*State Farm Mutual Automobile Insurance Company v. Bedell***

Defense Bar Supports Defendants’ Petition for Certiorari

CHICAGO – (September 28, 2011) – DRI – *The Voice of the Defense Bar* filed an amicus curiae brief in the United States Supreme Court case of *State Farm Mutual Automobile Insurance Company v. Bedell* (also known as *Blank v. State Farm*). In its brief DRI argues against the decision of the Supreme Court of Appeals in West Virginia, stating that the decision seriously and unnecessarily impedes the ability of law enforcement officials and insurers to protect businesses and consumers across the nation from insurance fraud. DRI is interested in this case as the issues raised in the petition are of significant importance to DRI’s members and their clients. It is estimated that insurance fraud costs Americans more than \$80 billion a year, or nearly \$950 per family on an annual basis. The court’s decision on this case, if left to stand, will only exacerbate the problem by imposing increased costs of unchecked fraud on American businesses and families.

The dispute in this case centers on a protective order entered in a routine personal injury lawsuit arising out of an automobile accident in West Virginia. West Virginia insurance regulations protect nonpublic health information against improper use and dissemination to third parties while authorizing the use of such information to investigate and prosecute suspected instances of fraud. These regulations impose an obligation on insurers like State Farm to report suspected fraud to the West Virginia Insurance Commissioner’s Fraud Unit. The plaintiff refused to turn over her medical records in connection with her claim, although she was contractually obligated to do so. The West Virginia courts required the plaintiff to produce the records, but only upon the entry of a protective order that precludes State Farm from using the records in connection with its otherwise authorized fraud-fighting duties. The order conflicts with State Farm’s retention and reporting obligations under state and federal laws, so State Farm filed a writ petition with the Supreme Court of Appeals of West Virginia to challenge the trial court’s entry of the protective order. The court denied State Farm’s writ petition.

State Farm’s petition for certiorari in the U.S. Supreme Court will raise several important issues of federal law that will affect businesses and consumers, including the prevention and detection of insurance fraud; judicial usurpation of legislative and executive power; and the First Amendment—the protective order is an unwarranted and unnecessary prior restraint to speech as State Farm has a contractual right to obtain

the plaintiff's medical information and a constitutional right to relay it to governmental and fraud prevention entities.

The protective order also conflicts with State Farm's Medicare obligations. Medicare's conditional payment recovery process requires the retention of medical records for well past the time required for the destruction of records under the protective order. The trial court's order also conflicts with the laws of other states, raising issues of full faith credit and due process.

"Overbroad protective orders can undermine the adversarial process, and can have unintended consequences that affect far more than the judicial system," stated Detroit attorney Mary Massaron Ross, First Vice President of DRI. "The sanctioning of a broad protective order that precludes the disclosure and requires destruction of confidential material that was already lawfully in the defendant's possession constitutes a prior restraint on speech and is a clear conflict with the precedent of this court and several federal courts of appeals."

"It is important to note that DRI recognizes the importance of protective orders as a necessary mechanism to protect sensitive and confidential material," Massaron Ross continued. Frequently, DRI's members obtain protective orders to prevent the unnecessary disclosure of trade secrets and other confidential business information that might be obtained through discovery from their clients. "This is clearly an overbroad protective order that unnecessarily impedes the ability of State Farm to effectively prevent fraud abuse."

The DRI brief is authored by Brian R. Matsui with Nicholas G. Miranda Morrison & Foerster, LLP in Washington, D.C. The brief is available in its entirety at www.dri.org.

About DRI – The Voice of the Defense Bar

DRI – *The Voice of the Defense Bar* is an international organization of defense attorneys and corporate counsel that is recognized as a thought leader and an advocate for the defense bar at the national and state level, as well as in Europe. With more than 22,000 members, DRI provides members and their clients with access to world-class education, legal resources and numerous marketing and networking opportunities that facilitate career and law firm growth. For more information log on to www.dri.org.

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