

Docket No.: 1170013

IN THE SUPREME COURT OF ALABAMA

Ex parte Industrial Warehouse Services, Inc.

PETITION FOR WRIT OF MANDAMUS: CIVIL

(In re: Chapman Wilson, as administrator of the Estate of
Janie Holt Wilson, deceased, v. Kenneth Oneal Herbert,
Industrial Warehouse Services, Inc., et al.)

(Bibb Circuit Court: CV-17-900051).

BRIEF OF AMICI CURIAE ALABAMA TRUCKING ASSOCIATION, INC.
AND TRUCKING INDUSTRY DEFENSE ASSOCIATION

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Statement of William Downey, The Kenan Advantage Group, Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, United States House of Representatives Committee on Transportation & Infrastructure, on behalf of the American Trucking Association (ATA), April 2, 2014. <http://transportation.house.gov/uploadedfiles/2014-04-02-downey.pdf>. 4

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STATEMENT OF THE STANDARD OF REVIEW

The Supreme Court's review of a petition for writ of mandamus to be issued to affect a trial court's control of the discovery process will issue "only when there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court." Ex parte Henry, 770 So. 2d 76, 79-80 (Ala. 2000), (internal quotation marks and citations omitted). The writ will not issue unless the Court "determines, based on all the facts that were before the trial court, that the trial court clearly abused its discretion.... Moreover, the right sought to be enforced by mandamus must be clear and certain with no reasonable basis for controversy about the right to relief and the writ will not issue where the right in question is doubtful." Id., (citations, brackets and internal quotation marks omitted).

SUMMARY OF THE ARGUMENT

Plaintiffs' attorneys have no right to use the confidential proprietary information they will obtain from IWS during discovery for any purpose outside this litigation. A party has a right to have its confidential and proprietary information protected "to the maximum extent practicable" yet the trial court did nothing to protect IWS's confidential proprietary information. Therefore, this Honorable Court should issue the writ and direct the trial court to enter a protective order that prohibits Plaintiffs from using IWS's confidential information for purposes other than this litigation.

ARGUMENT

I. THE INFORMATION THAT CAN BE OBTAINED FROM IWS'S DOCUMENT PRODUCTION IS CONFIDENTIAL PROPRIETARY INFORMATION IN THE TRUCKING INDUSTRY:

The trucking industry is vital to Alabama's economy and its citizens. According to the latest data available from the American Transportation Research Institute ("ATRI"), in 2012, trucks transported 80 percent of total manufactured tonnage in Alabama, which equates to 268,147 tons per day. (See Appendix 1, American Transportation Research Institute, "Alabama Fast Facts"). 86.1 percent of Alabama communities depend exclusively on trucks to move their goods. Id. In 2016, the trucking industry in Alabama provided 108,440 jobs or 1 out of 14 in the state. Id. That same year, total trucking industry wages paid in Alabama exceeded \$5.2 billion, with an average annual trucking industry salary of \$47,518. Id. The U.S. Bureau of Labor Statistics reported in May 2016 that heavy and tractor-trailer truck drivers held 31,890 jobs with an average annual salary of \$39,050. Id. In 2015, Alabama's trucking industry paid approximately \$567 million in federal and state roadway taxes. Id. The industry paid 39 percent of all taxes owed by Alabama motorists, although

trucks represented only 10 percent of vehicle miles traveled in the state. Id. As of January 2017, a typical five-axle tractor-semitrailer combination paid \$2,081 in state highway user fees and taxes in addition to \$8,906 in federal user fees and taxes. Id. These taxes were over and above the typical taxes paid by businesses in Alabama. Id.

As of April 2015, there were 9,160 trucking companies located in Alabama, most of them small, locally owned businesses. Id. These companies are served by a wide range of supporting businesses both large and small. Id. While there is some disparity in exact figures, over 90% of all trucking companies in the U.S. are small businesses. *Statement of William Downey, The Kenan Advantage Group, Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, United States House of Representatives Committee on Transportation & Infrastructure, on behalf of the American Trucking Association (ATA), April 2, 2014.* <http://transportation.house.gov/uploadedfiles/2014-04-02-downey.pdf>.

As might be deduced from these statistics, the trucking industry in Alabama and throughout the U.S. is highly competitive. Customers have many carriers from which to

choose. One industry expert explained that as a result of the competitive nature of the trucking industry, "day-to-day operations tend to be relationship-oriented. Companies strive to build close ties with customers in order to generate repeat business. Providing excellent service is a necessity, since customers can easily find an alternative shipper. Price competition is fierce, and the companies in this group generally operate with narrow margins."

Industry Analysis: Trucking, Value Line,

http://www.valueline.com/Stocks/Industries/Industry_Overview__Trucking.aspx.

IWS is a local, family-owned business. It values and depends on its customers and the contracts it makes with them. Many of its employees are local residents of Tuscaloosa County and its surrounding counties. (Affidavit of Phyllis Hahn, Exhibit I to IWS's Petition for Writ of Mandamus).

In light of the competitive nature of the business, trucking companies like IWS invest significant amounts of time, energy and money in developing a business model that distinguishes them from their competitors. They strive to protect the very business practices that give them a competitive advantage and must ensure that confidential,

proprietary and competitively sensitive information remains strictly confidential.

Trucking companies, just like any other litigant, do not surrender their rights to their confidential proprietary information just because they are named as a defendant in a lawsuit. When a trial court fails to provide adequate protection to a company's confidential proprietary information, the company may be devastated. Fortunately, Alabama law recognizes a company's right to protect proprietary information. Without such protections, Alabama's trucking industry and its large workforce would certainly suffer. Neither Alabama, nor its trucking industry can afford such.

In this case, IWS's confidential proprietary information may be derived from certain bills of lading and policy, procedure and safety standard documents. These types of documents and the confidential, proprietary and competitively sensitive information that can be derived therefrom are standard in the highly competitive trucking industry.

For instance, the bills of lading "typically included the names of the customers, rates of transportation, what

is being shipped, how much is being shipped, among other things." (Affidavit of Phyllis Hahn, Exhibit I to IWS's Petition for Writ of Mandamus). If IWS's competitors are allowed to obtain unredacted bills of lading, for six months, they will be able to determine not only the identity of IWS's customers, but also the logistics it employs to transport its freight, the prices it and its customers charge, the rates of transportation, what type of freight is being hauled, how much freight is being hauled, the frequency of the shipments, how IWS plans its trips, etc. If this information is disseminated outside this litigation, competitors may use IWS's proprietary information to undercut pricing and gain an unfair competitive advantage.

The safety protocols, policies, handbooks, manuals, etc. that IWS has been ordered to produce were all created by IWS or purchased by IWS for use in its unique business model. To allow the Plaintiffs to disseminate the information contained within these documents will permit the public and IWS's competitors to exploit IWS's business strategies and will give its competitors an unfair

advantage in the highly competitive Alabama trucking industry.

Further, IWS's contracts include confidentiality agreements which prohibit IWS from disclosing the customers' suppliers and shipment processes. Breaching these confidentiality agreements will expose IWS to peripheral litigation and the loss of customers.

Other trucking companies operating in Alabama may suffer the same devastating consequences in the future if this Court does not prevent trial courts from allowing proprietary information to go public. All of this could certainly be avoided by a simple protective order, such as the one requested by IWS, which limits the use of proprietary information to this litigation.

II. ALABAMA'S RULES OF CIVIL PROCEDURE AND EVIDENCE GIVE IWS A RIGHT TO PROTECT ITS PROPRIETARY INFORMATION:

Absent the Alabama's Rules of Civil Procedure, litigants like the Plaintiffs could not even access a company's confidential proprietary information and documentation. See Seattle Times Co. v. Rhinehart, 467 U.S. 20, 32, 104 S. Ct. 2199, 2207, 81 L. Ed. 2d 17 (1984) (wherein the U.S. Supreme Court stated "[a]s in all civil litigation, petitioners gained the information they wish to

disseminate only by virtue of the trial court's discovery processes. As the Rules authorizing discovery were adopted by the state legislature, the processes thereunder are a matter of legislative grace. A litigant has no First Amendment right of access to information made available only for purposes of trying his suit."). The Alabama Rules of Civil Procedure allow parties to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Rule 26(b)(1), Ala. R. Civ. P. Due to the broad scope of discovery available under Alabama's Rules of Civil Procedure, litigants are often required to produce confidential information which otherwise would be protected from disclosure. However, parties subject to discovery can prevent disclosure of confidential proprietary matters by securing a protective order pursuant to Rule 26(c), Ala. R. Civ. P. and Rule 507, Ala. R. Evid. See e.g., Ex parte Dumas, 778 So. 2d 798, 801 (Ala. 2000).

Rule 26(c) protects a party from "[a]nnoyance, embarrassment, oppression, or undue burden or expense" and contemplates protective orders designed to protect a party's "trade secret or other confidential research,

development, or commercial information" by allowing them to be disclosed "only in a designated way." Rule 26 (c)(7), Ala. R. Civ. P. This Honorable Court has acknowledged that in certain circumstances like these, a party is "entitled to insist on a confidentiality agreement limiting disclosure only to parties essential to the litigation." Ex parte Warrior Lighthouse, Inc., 789 So.2d 858, 861 (Ala., 2001). Protective orders, such as those contemplated by Rule 26, play a vital role in Alabama's Civil Justice System by prohibiting public disclosure of confidential business information or otherwise limiting its use. These protective orders are especially important to trucking companies like IWS and the trucking industry as a whole.

In addition, Rule 507, Ala. R. Evid, provides additional protections. Rule 507 states: "A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the

privilege and of the parties and the interests of justice require. Ala. R. Evid. 507. See also Ex parte W.L. Halsey Grocery Co., 897 So.2d 1028, 1035 (Ala.,2004) (a litigant's trade secret is "entitled to protection in excess of that provided in the normal discovery process... Rule 507, Ala. R. Evid., provides that when a person is ordered to disclose a trade secret, the trial court 'shall take such protective measures as the interests of the holder of the privilege and of the parties and the interests of justice require...'" the trial court must protect the "trade-secret information to the maximum extent practicable, striking a fair and reasonable balance between Halsey's legitimate interest in confidentiality and the defendants' equally legitimate interest in defending the claims against them with the benefit of discovery."); See also, Ex parte Michelin N. Am., Inc., 161 So. 3d 164, 170 (Ala. 2014) (granting writ of mandamus where trial court "failed to recognize Michelin's right to protect its trade secrets and compelled the disclosure of irrelevant information."). Alabama trucking companies, like IWS, have a clearly defined right to protective orders that protect

confidential business information obtained during discovery.

In addition, a trucking company's confidential, proprietary information that can be derived from its bills of lading, policies, procedures, handbooks, manuals, etc., like the confidential information in this case, clearly meets the definition of a "trade secret." In Ex parte Miltope Corp., 823 So. 2d 640, 644 (Ala. 2001), this Court analyzed what qualifies as a "trade secret." This Court stated "§ 8-27-2(1), Ala.Code 1975, states that a 'trade secret' is information that:

- 'a. Is used or intended for use in a trade or business;
- b. Is included or embodied in a formula, pattern, compilation, computer software, drawing, device, method, technique, or process;
- c. Is not publicly known and is not generally known in the trade or business of the person asserting that it is a trade secret;
- d. Cannot be readily ascertained or derived from publicly available information;
- e. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and
- f. Has significant economic value.' "

Ex parte Miltope Corp., 823 So. 2d 640, 644 (Ala. 2001). A trucking company's confidential information, like that in this case, is clearly intended for use in trucking business. Trucking companies undoubtedly include their methods and techniques developed over years of business in their policy, procedure and standard documentation. Clearly the information is not publicly known, and, in fact, this is further evidenced by existence of confidentiality agreements like those IWS maintains with its customers. None of this confidential, proprietary information can be ascertained or derived from publicly available information. Trucking companies like IWS make every effort to maintain the secrecy of this type of information. Lastly, there is a significant economic value in a trucking company's customer list and the materials, manuals and other documents which set forth a trucking company's practices and procedure. See Ex parte W.L. Halsey Grocery Co., 897 So.2d 1028, 1035 (Ala.,2004) (where Halsey satisfied the elements of the definition of "trade secret" with facts similar to those in this case); see also, Ex parte Delta Int'l Mach. Corp., 75 So. 3d 1173 (Ala. 2011) (where evidence of confidentiality agreements

supported a finding that certain technology was a trade secret and holding that the trial court "exceeded its discretion in allowing discovery of that technology and any device incorporating the technology and in allowing access to the technology and the device by Delta's competitor.").

The confidential, proprietary and competitively sensitive information of any trucking company operating on Alabama's roadways, like that which IWS seeks to protect here, is unquestionably subject to protection by Alabama's Rules of Civil Procedure and Rules of Evidence. As such, IWS is entitled to a protective order limiting the use of such information to this litigation.

III. DISCOVERY SHARING SHOULD NOT BE PERMITTED, AND A PROTECTIVE ORDERS SHOULD ISSUE:

In this case, Plaintiffs' attorney intends to disseminate IWS's confidential information to a nationwide database for plaintiff's attorneys. This Honorable Court should not permit such conduct, lest the trucking industry and its Alabama workforce will suffer. First, as is mentioned above, there is no First Amendment or common law right to use discovery materials outside of the litigation in which they are produced. Seattle Times Co. v. Rhinehart,

467 U.S. 20, 32, 104 S. Ct. 2199, 2207, 81 L. Ed. 2d 17 (1984). Furthermore, as espoused by the U.S. Supreme Court, trial courts should deny discovery requests designed to gather information for use in proceedings other than the pending suit. See Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 98 S. Ct. 2380, 57 L. Ed. 2d 253 (1978).

Nevertheless, plaintiff's attorneys offer all sorts of explanations as to why "discovery sharing" (i.e., dissemination of discovery materials to other plaintiff's attorneys for use outside the subject litigation in which the material is obtained) should be allowed. One of the most common justifications offered by proponents of "discovery sharing" is that they increase litigation efficiency. However, as one commentator explains, sharing agreements do nothing to increase efficiency and actually waste time and judicial resources:

"The primary rationale set forth in favor of allowing sharing is to increase litigation efficiency by allowing the sharing of information between participants in lawsuits involving the same facts and avoiding costly and time-consuming discovery." [*Byrd v. U.S. Xpress, Inc.*, 2014-Ohio-5733, ¶ 24, 26 N.E.3d 858, 865] Yet, proponents of this claimed benefit of discovery sharing often seek such sharing where there is no limitation to similar claims, known litigants, or even actual claims, making duplicative discovery all the more unlikely. Rather, they seek unfettered discretion

to share the information, which creates more inefficiencies and side litigation than it eliminates. [See generally *Byrd*, 26 N.E.3d 858; *McKellips v. Kumho Tire Co., Inc.*, No. 13-cv-2393-JTM-TJJ, 2014 WL 3541726 (D. Kan. Jul. 17, 2014).] In addition, if there is no provision for the return of confidential documents at the end of a litigation (and such a provision is clearly inconsistent with a sharing provision), "the court ostensibly retains jurisdiction to act if someone violates the terms of the order[,]" which "calls for the court's involvement in perpetuity." [*Byrd*, 26 N.E.3d at 867.]

Sharing provisions "invoke several important interests. First, of course, is the producing party's desire to keep its confidential information secret." [*Id.* at 864.] This is of paramount importance where trade secrets or other commercially sensitive information is involved, which is "an interest which must not be lightly disregarded." [*Id.*] Indeed, courts and commentators have recognized the irreparable harm public dissemination of confidential information will cause to a corporate defendant and that "the more widely confidential documents are disseminated, it becomes both more likely that those documents will be released, and more difficult for the Court to enforce the terms of its protective order." [*Williams v. Taser Int'l, Inc.*, No. 1:06-CV-0051-RWS, 2006 WL 1835437 at *2 (N.D. Ga. Jun. 30, 2006); see generally Dustin B. Benham, *Proportionality, Pretrial Confidentiality, and Discovery Sharing*, 71 Wash. & Lee L. Rev. 2181, 2204 (2014) (proponent of sharing acknowledging that the potential for sensitive information reaching a defendant's direct competitor increases with each individual disclosure).]

Thus, instead of increasing efficiency, discovery sharing actually wastes time and judicial resources because defendants will most aggressively resist disclosure in discovery for

fear of uncontrolled dissemination of their confidential information; thus opening the door to a "glut of protective order litigation" in the courts. [Campbell, *supra* note 3, at 823.]

Joshua K. Leader, Gloria Koo, Protective Orders and Discovery Sharing: Beware of Plaintiffs Bearing Sharing Agreements, 82 Def. Couns. J. 453, 455-56 (2015).

The more efficient and effective way to approach confidential information, such as that maintained by trucking companies, is through protective orders that prohibit public disclosure of confidential business information outside the litigation in which it is obtained. This approach will enable litigants to exchange confidential information in a "just, speedy and inexpensive" manner as is contemplated by the Alabama Rules of Civil Procedure. Rule 1(c), Ala. R. Civ. P. The U.S. Supreme Court explains, "[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action." Thus, protective orders like those contemplated by Rule 26(c) act to prevent public disclosure of confidential "information that not only is irrelevant but if publicly released could be damaging to reputation and privacy. The government clearly has a substantial interest

in preventing this sort of abuse of its processes." Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35, 104 S. Ct. 2199, 2209, 81 L. Ed. 2d 17 (1984).

This Court enunciated the dangers in requiring production of trade secrets without sufficient protection:

"If a trial court orders the discovery of trade secrets and such are disclosed, the party resisting discovery will have no adequate remedy on appeal. The proverbial bell cannot be unrung and an appeal after final judgment on the merits will not rectify the damage." *Gibson-Myers & Assocs. v. Pearce*, (No. 19358, Oct. 27, 1999) (Ohio Ct. App. 1999) (unpublished). Trade secrets should receive greater protection from discovery because they "derive[] economic value from being generally unknown and not readily ascertainable by the public." *Nester v. Lima Mem'l Hosp.*, 139 Ohio App.3d 883, 888, 745 N.E.2d 1153, 1157 (2000)(Walters, J., dissenting). "Once the information becomes available through the discovery process, a subsequent appeal, even if successful, cannot restore the valuable secretive nature." *Id.* Disclosure of a trade secret could cause "irreparable harm." *Binkley v. Allen*, (No. 2000-CA-00160, Feb. 5, 2001) (Ohio Ct. App. 2001) (unpublished). Although the trial court's protective order contains some safeguards, the probable dispersion of the trade secrets is practically unlimited, and the safeguards are clearly inadequate. We conclude that the trial court abused its discretion in compelling Miltope to produce the requested documents, because of the risk of harm to Miltope caused by disclosure of its trade secrets.

Ex parte Miltope Corp., 823 So. 2d 640, 644-45 (Ala. 2001).

The trial court in this case entered an order compelling IWS to produce trade secrets. After IWS's competitors obtain its confidential proprietary information, IWS will never be able to restore the valuable secretive nature of its proprietary information. IWS has no adequate remedy on appeal. The trial court provided no safeguards whatsoever in requiring IWS to produce this information. The trial court abused its discretion in not entering a protective order limiting the use of IWS's confidential proprietary information to use only in the present litigation. If trial courts in Alabama are allowed to disregard other trucking companies' confidential proprietary information like the trial court did in this case, Alabama's Trucking Industry and its workforce will substantially suffer.

CONCLUSION

Trucking companies in general, just like IWS herein, are entitled to have their confidential and proprietary information protected "to the maximum extent practicable" and the trial court's failure to enter a protective order was an abuse of discretion. Therefore, this Honorable Court must issue the writ and direct the trial court to

enter a protective order that prohibits Plaintiffs from using IWS's confidential information for purposes other than this litigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, which was electronically filed today, has been served through electronic means pursuant to Rules 25(c)(1)(D) and 57(h)(5), Ala. R. App. P., by e-mailing a copy of the foregoing on the following:

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This, the 6th day of November 2017.

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APPENDIX 1

American Transportation Research Institute,
"Alabama Fast Facts"

Alabama Fast Facts



TRUCKING DRIVES THE ECONOMY

- **Employment:** In 2016, the trucking industry in Alabama provided 108,440 jobs or 1 out of 14 in the state. Total trucking industry wages paid in Alabama in 2016 exceeded \$5.2 billion, with an average annual trucking industry salary of \$47,518. The U.S. Bureau of Labor Statistics (BLS) reported in May 2016 that heavy and tractor-trailer truck drivers held 31,890 jobs with an average annual salary of \$39,050.
- **Small Business Emphasis:** As of April 2015, there were 9,160 trucking companies located in Alabama, most of them small, locally owned businesses. These companies are served by a wide range of supporting businesses both large and small.
- **Transportation of Essential Products:** Trucks transported 80% of total manufactured tonnage in the state in 2012 or 268,147 tons per day. 86.1% of Alabama communities depend exclusively on trucks to move their goods.

TRUCKING PAYS THE FREIGHT

- **As an Industry:** In 2015, the trucking industry in Alabama paid approximately \$567 million in federal and state roadway taxes. The industry paid 39% of all taxes owed by Alabama motorists, despite trucks representing only 10% of vehicle miles traveled in the state.
- **Individual Companies:** As of January 2017, a typical five-axle tractor-semitrailer combination paid \$2,081 in state highway user fees and taxes in addition to \$8,906 in federal user fees and taxes. These taxes were over and above the typical taxes paid by businesses in Alabama.
- **Roadway Use:** In 2015, Alabama had 102,019 miles of public roads over which all motorists traveled 67.3 billion miles. Trucking's use of the public roads was 6.4 billion miles.

SAFETY MATTERS

- **Continually Improving:** In 2014 the U.S. large truck fatal crash rate was 1.23 fatal crashes per 100 million vehicle miles traveled (VMT). This rate has dropped by 73% since the U.S. Department of Transportation (DOT) began keeping these records in 1975. The 2014 fatal crash rate for the state of Alabama was 1.14 per 100 million VMT.
- **Sharing the Road:** The trucking industry is committed to sharing the road safely with all vehicles. The Share the Road program sends a team of professional truck drivers to communities around the country to teach car drivers about truck blind spots, stopping distances and how to merge safely around large trucks, all designed to reduce the number of car-truck accidents.
- **Safety First:** Alabama Trucking Association members put safety first through improved driver training, investment in advanced safety technologies and active participation in industry safety initiatives at the local, state and national levels.

TRUCKS DELIVER A CLEANER TOMORROW

- **Fuel Consumption:** The trucking industry continues to improve energy and environmental efficiency even while increasing the number of miles driven. In 2014, trucks consumed 97 billion fewer gallons of fuel than passenger vehicles in the U.S. and accounted for just 17% of the total highway transportation fuel consumed.
- **Emissions:** Through advancements in engine technology and fuel refinements, new diesel truck engines produce 98% fewer particulate matter (PM) and nitrogen oxides (NOx) emissions than a similar engine manufactured prior to 1990. Sulfur emissions from diesel engines have also been reduced by 97% since 1999.
- **Partnerships:** Through the U.S. Environmental Protection Agency's (EPA) SmartWay Transport Partnership, the trucking industry is working with government and businesses to quantify greenhouse gas emissions and take steps to reduce them.

