

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

E.A. RENFROE & CO., INC.

Plaintiff,

v.

CORI RIGSBY and KERRI RIGSBY,

Defendants.

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No. 2:06-cv-1752-WMA

FILED UNDER SEAL

**DEFENDANTS’ MOTION TO COMPEL TESTIMONY OF WITNESSES
OVER STATE FARM COUNSEL’S INSTRUCTION NOT TO ANSWER
QUESTIONS AND FOR SANCTIONS**

COME NOW defendants Cori Rigsby and Kerri Rigsby (“Rigsbys” or “Defendants”), by and through their undersigned counsel, and move the Court compel David Randel and John Dagenhart to give deposition testimony related to questions upon which State Farm’s counsel and/or Mr. Randel’s personal counsel instructed them not to answer and to award to the Rigsbys the costs and fees related to said improper instructions, including the costs and fees related to filing this motion and taking additional testimony from these witnesses. In support of this Motion, the Rigsbys state as follows:

1. The dispute herein arose during the depositions of two non-party witnesses, David Randel and John Dagenhart.¹ Counsel for the Rigsbys attempted to resolve the dispute with opposing counsel during these depositions short of filing this Motion, but were unsuccessful.

2. On Thursday, May 15, 2008, counsel for the Rigsbys deposed David Randel, a State Farm catastrophe services section manager assigned to the Mississippi Gulf Coast area shortly after Hurricane Katrina. Mr. Randel was the highest ranking State Farm supervisor in the Biloxi office from which State Farm policyholder claims related to Hurricane Katrina were being handled. The Rigsbys reported their allegations of fraud in the handling of policyholder claims to Mr. Randel.

3. Later that day, counsel for the Rigsbys deposed John Dagenhart, a State Farm team manager assigned to the Mississippi Gulf Coast area shortly after Hurricane Katrina. Mr. Degenhart reported to Mr. Randel and handled the day-to-

¹ The Rigsbys subpoenaed these two State Farm employees for depositions on or about April 7, 2008. These witnesses attempted to avoid giving their depositions in this matter, filing motions to quash these subpoenas for improper service of process in the United States District Court for Colorado from where the subpoenas were issued. The motions to quash were denied and the witnesses were ordered to appear for deposition on April 25, 2008. In fact, one of the courts ruling on the motions noted that Mr. Dagenhart appeared to be “purposefully evading service of process.” See Order of the Honorable Kathleen Tafoya entered April 18, 2008, in Renfroe v. Rigsby, In re: John Dagenhart, In the United States District Court for the District of Colorado, Misc. Civil Action No. 08-CV-00732-RPM-KMT, attached hereto as Exhibit “A”, at 11. Subsequently the parties agreed to take the depositions on May 15, 2008 in Birmingham, Alabama.

day operations of State Farm's Biloxi office during the relevant time period. Cori Rigsby turned in her resignation to Mr. Dagenhart.

4. In the deposition of Mr. Dagenhart, counsel for State Farm prevented counsel for the Rigsbys from showing Mr. Dagenhart any of the Restricted Documents or question him about any of these documents. (See Deposition of John Deganhart, excerpts from which are attached hereto as Exhibit "B", at 92:17-97:22). The Court's protective order of October 10, 2007, clearly allows counsel to show these documents to any witnesses and examine any witnesses about these documents. (See Court's Order (Dkt. # 172) at 2(c)). Counsel for State Farm acknowledged that the Court's protective order allowed Mr. Deganhart to be questioned about the restricted documents, but expressed concern that showing the documents to Mr. Deganhart could impact his representation of State Farm in the qui tam case. (Dagenhart Depo. at 93:23-95:16)

5. Further, during both Mr. Randel's deposition and Mr. Deganhart's deposition, counsel for State Farm objected to numerous questions and then took the additional step of instructing these witnesses not to answer questions on two other issues that are the basis for this Motion. In particular, these two areas include (1) whether either of these individual witnesses have knowledge of multiple engineering reports or of fraud by State Farm on policyholders arising out of Hurricane Katrina (See Deposition of David Randel, excerpts of which are

attached hereto as Exhibit "C", at 119:6-122:14, 130:12-132:17; Dagenhart Depo. at 85:23-87:3) and (2) whether State Farm conducted any investigation into the allegations of fraud on State Farm policyholders made by the Rigsbys, who was interviewed as part of any such investigation, or whether anyone was disciplined as a result of any investigation. (See Randel Depo. at 113:18-116:3; 129:20-133:23; Dagenhart Depo. 77:18-79:13; 87:4-87:10)

6. Further, both personal counsel for Mr. Randel and State Farm counsel for Mr. Randel objected to certain questioning about whether Mr. Randel had invoked the Fifth Amendment privilege in response to questions related to the allegations of fraud on State Farm policyholders. (See Randel Depo. at 123:11-129:4)

7. Counsel for the Rigsbys offered to call Judge Acker during the depositions to resolve the various issues; however, counsel for State Farm preferred to brief the issues and agreed to reproduce these witnesses if the Court ordered that the questions in these areas be answered. (See Randel Depo. at 131:4-133:20; Dagenhart Depo. at 86:16-87:2; 96:12-96:18)

8. Under Rule 26 of the F.R.Civ.P., discovery is broad and may include inquiries into any areas that are reasonably calculated to lead to the discovery of admissible evidence. As to the questions related to Mr. Randel or Mr. Dagenhart's knowledge of multiple engineering reports or whether fraud was had on State Farm

policyholders, State Farm's counsel objected on the basis that this was an area of inquiry which was in dispute related to a subpoena to a 30(b)(6) representative of State Farm. As to questions related to whether State Farm conducted any investigation into the allegations made by the Rigsbys, who may have been interviewed as part of any investigation, and what documents may have been produced as part of any investigation, State Farm objected on the basis of an attorney/client privilege. As to questions to Mr. Randel about invoking the Fifth Amendment, objections were made that it would invade another court's order to answer them.

9. The questions presented on the various topics at issue relate to the knowledge of facts of the individual deponents. The Court should order these witnesses to appear for further deposition questions related to whatever knowledge these witnesses have related to the areas of whether any fraud occurred on State Farm policyholders and whether they were aware of multiple engineering reports in policyholder claims files. Further, while the results of any investigation may be privileged, discovering information such as whether either witness has knowledge of whether an investigation was conducted, who was interviewed, or what documents they may have produced related to such an investigation does not invade the attorney/client privilege. Last, any court order related to testimony of Mr. Randel which is sealed which Mr. Randel's counsel maintains prevents

disclosure of whether he has invoked the Fifth Amendment should be should be submitted to the Court and the Court should determine whether such information can be obtained in this case.

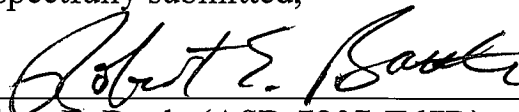
10. The Court should award the fees and costs associated with preparing this Motion to Compel due to the improper instructions not to answer given by State Farm's counsel to these witnesses. See F.R.Civ.P. Rules 30(d)(2) and 37(a)(5).

11. The Court should also order Mr. Randel and Mr. Dagenhart to appear for depositions to answer questions on the area on which State Farm's counsel and/or Mr. Randel's personal counsel instructed them not to answer during their initial depositions. In this event, in addition to the costs and fees related to the preparation of this Motion, the Rigsbys' counsel will be forced to incur unnecessary fees and costs to take additional deposition testimony from these witnesses. Therefore, the Rigsbys' request that the Court also award any related costs, including attorney's fees and court reporter expenses to do so. See F.R.Civ.P. Rules 30(b)(2) and 37(a)(5).

WHEREFORE, PREMISES CONSIDERED, the Rigsbys request that the Court compel Mr. Randel and Mr. Dagenhart to appear for deposition and answer questions related to the areas of issue in this Motion as set forth above, to award the fees and costs related to the drafting of this Motion, and of taking the additional

testimony from these witnesses, and to grant any other relief which the Court deems appropriate.

Respectfully submitted,



Robert E. Battle (ASB-7807-T67R)

Harlan F. Winn, III (ASB-7322-N73H)

Jon H. Patterson (ASB-4981-J69P)

Attorneys for Defendants, Cori Rigsby and Kerri Rigsby

OF COUNSEL:

**BATTLE FLEENOR GREEN
WINN & CLEMMER LLP**

The Financial Center
505 North 20th Street, Suite 1150
Birmingham, Alabama 35203
Telephone: (205) 397-8160
Fax: (205) 397-8179
Email: rbattle@bfgwc.com
hwinn@bfgwc.com
jpatterson@bfgwc.com

CERTIFICATE OF SERVICE

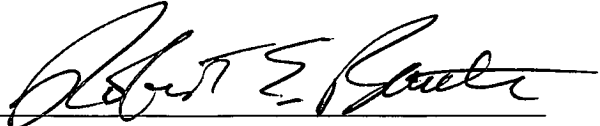
I hereby certify that a copy of the foregoing has been served on the following counsel of record via email and by directing same to their office addresses through first-class, United States mail, postage prepaid, on this the 29th day of May, 2008:

Barbara Ellis Stanley
One City Centre, Suite 1290
1021 Main Street
Houston, Texas 77002
bstanley@helmsgreene.com

Jack Held
J. Rushton McClees
Sirote & Permutt
2311 Highland Avenue
Birmingham, Alabama 35203
Post Office Box 55727
Birmingham, Alabama 35201
jackheld@sirote.com
rmcclees@sirote.com

Patrick C. Finnegan
Helmsing, Leach, Herlong, Newman & Rouse, P.C.
The LaCledde Building, 150 Government Street, Suite 2000
Mobile, Alabama 36602
pcf@helmsinglaw.com

Michael Beers
Beers, Anderson, Jackson, Patty, & Fawal, P.C.
250 Commerce Street, Suite 100
Montgomery, Alabama 36104
mbeers@beersanderson.com



OF COUNSEL

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 08-cv-00732-RPM-KMT

E.A. RENFROE & COMPANY, INC.,

Plaintiff,

v.

CORI RIGSBY MORAN, and
KERRI RIGSBY,

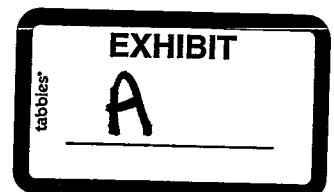
Defendants,
and

JOHN DAGENHART,

Interested Party.

ORDER

This matter is before the court on “Petitioner’s Combined Motion to Quash Deposition Subpoena, and Motion for Protective Order” (“Petition” [Doc. No. 1, filed April 10, 2008]). The parties submitted simultaneous briefing on the pertinent issues including, “Petitioner’s Submission of Legal Authorities Re: Sufficiency of Service of Subpoena Pursuant to Fed. R. Civ. P. 45(b)(1), in Support of Combined Motion to Quash Deposition Subpoena, and Motion for Protective Order” filed by deponent Dagenhart (“Pet. Suppl.”[Doc. No. 3, filed April 15, 2008]) and “Response to Petitioner’s Combined Motion to Quash Deposition Subpoena and Motion for



Protective Order” filed by Alabama Defendants and proponents of the subpoena, Cori Rigsby Moran and Kerri Rigsby (“Rigsby Rsp.”[Doc. No. 4, filed April 15, 2008]).

The subpoena at issue in this case sought deposition testimony from Mr. Dagenhart on April 11, 2008 at 9:00 a.m. at the offices of Holland & Hart in Denver, Colorado, the day following the filing of the Motion to Quash. The petitioner’s grounds for seeking to quash the subpoena were that service of process was inadequate, inadequate notice of the deposition had been provided, and that attending the deposition in Denver would be burdensome because of the deponent’s extensive business travel, all pursuant to the provisions of Fed. R. Civ. P. 45 concerning subpoenas served on non-party witnesses.

On Monday, April 14, 2008 at 2:30 p.m., the court held a telephonic hearing. [Doc. No. 5] The parties acknowledged the date originally noticed for the deposition had passed the prior Friday. The proponents of the subpoena had been notified of the impending Petition and neither Mr. Dagenhart nor any party appeared. The proponents of the deposition advised that the discovery cut-off date in the Alabama case is April 25, 2008.

The petitioner advised the court that Mr. Dagenhart traveled frequently and, although his residence was within 100 miles of the proposed deposition location, he “might” not be in Colorado at the time of any proposed deposition. The court attempted to persuade the parties to reach agreement on a date, time and place for the deposition to be rescheduled to provide Mr. Dagenhart with adequate notice and time to prepare. Mr. Dagenhart’s counsel declined to accept any alternate date or place for deposition prior to the resolution of his Petition. Therefore, the court granted the oral motion of the Rigsbys to amend the notice of deposition to reflect a new

deposition date of April 25, 2008 (the discovery cut off date) at 9:00 a.m. in Denver, Colorado and ordered further briefing to be filed on April 15, 2008; as noted, both parties provided supplemental briefing.

The parties do not dispute the underlying facts concerning issuance and service of the Rule 45 subpoena on Mr. Dagenhart. On April 4, 2008, the Rigsbys' counsel issued a subpoena for the deposition of John Dagenhart to take place on April 11, 2008 in Mr. Dagenhart's residence state of Colorado. The Rigsbys hired a process server to serve the subpoena. (Rigsby Rsp. at 1). The subpoena was served on April 7, 2008 at 3:28 p.m. at Mr. Dagenhart's residence by first inquiring if Mr. Dagenhart's wife, who answered the door, would accept service. When acceptance was refused, the process server left the subpoena at the front door of the residential address. (Rigsby Rsp. Exh. A; Petition at 3).

Also undisputed is that counsel for the Rigsbys and Mr. Dagenhart conferred telephonically prior to April 11, 2008 and that counsel for the Rigsbys, when apprised of Mr. Dagenhart's travel schedule, offered to move the date of the deposition to a more convenient date for Mr. Dagenhart and also offered to move the deposition to a location where Mr. Dagenhart was working. (*See*, Rigsby Rsp., Exhibit B). The offer was declined. The same offer was made and declined during the April 14, 2008 hearing. The Rigsbys claim that Mrs. Dagenhart told the process server on April 7, 2008 that Mr. Dagenhart was out of town but that he was due to return to Colorado on April 18, 2008. (Rigsby Rsp. at 4).

The objection raised in the Petition concerning lack of sufficient notice for the taking of a deposition under Fed. R. Civ. P. 45(c)(3)(A)(I) is now moot because the original date of April 11,

2008 has passed, Mr. Dagenhart was not required to attend the deposition, and the new date of April 25, 2008 provides ample notice of the proposed deposition. The court notes, as well, the original subpoena was served more than 48 hours prior to the date of the proposed deposition on April 11, 2008, so in any event was timely according to the Local Rules of this court.

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The remaining issues before the Court, then, are whether service of a subpoena on a non-party individual pursuant to Rule 45(b)(1) must be accomplished by personal, hand-to-hand service under the facts and circumstances of this case and whether Mr. Dagenhart is required to attend a deposition in Denver, Colorado which undisputedly is within 100 miles of his residence in Castle Rock, Colorado.

The primary issue between parties in any contest involving the proper and appropriate service of process or notice is whether Due Process requirements were fulfilled as detailed by the United States Supreme Court in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950). In *Mullane*, the Supreme Court clearly articulated the due process requirements of service:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

Id. at 314 (citations omitted); *see also Henderson v. United States*, 517 U.S. 654, 672 (1996)

("[T]he core function of service is to supply notice of the pendency of a legal action, in a manner

and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections.”)

The Supreme Court held that Due Process is satisfied when a recipient receives notice of the activity involved and is provided with an opportunity to be heard. The notice prong of *Mullane* requires that notice must be transmitted in a manner that is reasonably calculated to reach the recipient, “The means [of service] must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected” *Id.*

Rule 45(b)(1), under which subpoenas requiring a non-party to provide testimony through deposition can be issued, provides that, “[s]erving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person’s attendance, tendering the fees for 1 day’s attendance and the mileage allowed by law.” Although the wording of the Rule subsequent to the December 1, 2007 rule amendments has changed somewhat, the requirement of “delivery” to the person remains intact.

Although the rule does not now, and never has, used the term “personal service,” many courts have interpreted the relevant language as permitting exclusively hand-to-hand personal service. *See, i.e. Klockner Namasco Holdings Corporation v. Daily Access. Com, Inc.*, 211 F.R.D. 685, 687 (N.D. Ga. 2002) (in the context of a motion to compel and for sanctions, personal service of deposition subpoena on nonparty deponent’s wife at nonparty deponent’s residence not proper because nonparty deponent was not personally served); *Weiss v. Allstate*

Insurance Company, 512 F. Supp. 2d 463 (E.D. La. 2007) (service is improper if the person himself is not served with a copy of the subpoena); *Smith v. Midland Brake, Inc.*, 162 F.R.D. 683, 685-86 (D. Kan. 1995) (certified mail not acknowledged by deponent did not constitute valid service under Rule 45).

Several courts have held, however, that personal service of a subpoena is not required in every instance pursuant to Fed. R. Civ. P. 45. *See, e.g., King v. Crown Plastering Corp.*, 170 F.R.D. 355, 356 (E.D.N.Y. 1997) (“the court sees no reason for requiring in hand delivery so long as service is made in a manner that reasonably insures actual receipt of the subpoena by the witness”); *First Nationwide Bank v. Shur*, 184 B.R. 640, 642 (E.D.N.Y. 1995) (“‘delivering’ a copy of a subpoena, for the purposes of Rule 45 includes any act or series of acts that reasonably assures the entity to which it is addressed fair and timely notice of its issuance, contents, purpose and effect”); *Hinds v. Bodie*, 1988 WL 33123, *1 (E.D.N.Y. 1988) (court ordered service by alternative means after five unsuccessful attempts to serve subpoena on non-party witness). There appears to be no binding precedent in the Tenth Circuit favoring either position.

The starting point for the interpretation of a statute or Rule is the language of the statute itself. “Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.” *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990); *see also Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985).

The language of Rule 45 does not explicitly demand personal service of a subpoena, but instead requires only that a copy be “deliver[ed]” to the person whose attendance is sought. Such

language neither strictly requires in-hand service nor prohibits alternative means of service. *Shur*, 184 B.R. at 642; *Ultradent Prods., Inc. v. Hayman*, D.C.N.Y. 2002, 2002 WL 31119425, *3 (D.C.N.Y. 2002) (citing Charles Allan Wright & Arthur R. Miller, *Federal Practice and Procedure Civil 2d*, (2d Ed. 1995). See also, *Western Resources, Inc. v. Union Pac. R.R. Co.*, 2002 WL 1822432 (D. Kan. 2002) (effective service under Rule 45 not limited to personal service); *W.E. Green v. Baca*, 2005 WL 283361 (C.D. Cal. 2005) (same).

The American Heritage Dictionary of the English Language (hereinafter, “The American Heritage Dictionary”) defines “deliver” as “[t]o bring or transport to the proper place or recipient.” *The American Heritage Dictionary of the English Language* 494 (3d Ed.). “Transport” is defined as “[t]o carry from one place to another; convey”, *id.* at 1903, and “convey” is defined, in part, as “[t]o communicate or make known; impart”, *id.* at 412. Nothing in the everyday meaning of any of these words expresses or suggests a requirement that “delivery” be effected exclusively by the hand of one human being to the hand of another. *Shur*, 184 B.R. at 642. Black’s Law Dictionary defines “delivery” as “[t]he act by which the res or substance thereof is placed within the actual or constructive possession or control of another.” *Black’s Law Dictionary* 428 (6th Ed. 1990). Based upon the construction of the English language, the *Shur* court concluded, “any act or series of acts” which assures the subject of the subpoena fair and timely notice is proper under the plain language of Rule 45. *Id.* at 642-643.

Reading the relevant language to require personal service would also render superfluous that part of Rule 45 indicating that proof of service is accomplished under the rule “by filing with the clerk of the court ... a statement of the date and manner of service.” Fed. R. Civ. P. 45(b)(3).

If the only manner of service permitted under the rule were by hand, no statement of the manner of service would be necessary. *King v. Crown Plastering Corp.* 170 F.R.D. at 356. Moreover, if Rule 45 is read as requiring personal, in-hand service, then the language in Rule 4(e) specifying that “delivery” to the relevant individual be done “personally” would be pure surplusage. *See* Fed. R. Civ. P. 4(e)(2) (service may be effected by “delivering a copy of the summons and of the complaint to the individual personally.”).

Fed. R. Civ. P. 4 bears many similarities with Rule 45. Rule 4 governs issuance and service of a summons. Rule 4 sets forth the requirements for service of the summons and details--with great specificity--the guidelines for service on different types of defendants. Rule 4 very explicitly provides several methods of service of a summons on an individual in the United States. As recognized in the Advisory Committee’s note to the 1993 Amendments of the Federal Rules of Civil Procedure, the term “service of process” is not limited to service of the summons and complaint but covers other process as well. Fed. R. Civ. P. 4, advisory committee’s note at 1993 Amendment. *See also Ultradent Products*, 2002 WL 31119425 at *3.

Service of a summons and complaint on a party, governed by Rule 4, both notifies the party of a pending action and compels that party to comply by filing responsive papers or suffering a default judgment to be entered against it. Similarly, service of a subpoena on a third party witness to a litigation notifies the witness that his appearance is required, and compels compliance with the order therein. The elements of notice and compulsion exist under both Rules. *Id.* at 3-4. At least one recent court has opined, “the court sees no policy distinction between Rules 4, 5 and 45, such that service other than personal service should be sufficient under

the first two but not the third. *W.E. Green*, 2005 WL 283361 at fn 1 (service made by “leaving it at the person’s office with a clerk or other person in charge, or if no one is in charge, leaving it at a conspicuous place in the office” is sufficient service.)

The obvious purpose of Rule 45(b) is to mandate effective notice to the subpoenaed party, rather than “slavishly adhere to one particular type of service.” *Hall v. Sullivan*, 229 F.R.D. 501, 503-06 (D. Md., 2005) Thus, it is clear from the protections provided in Rule 45 that when a non-party receives actual notice, as Dagenhart did in this case, that party can protect itself from being compelled to give deposition testimony simply by filing objections as Mr. Dagenhart has done in this case. *See* Fed. R. Civ. P. 45(c)(2)(A). The courts that have upheld service by alternative means have uniformly held that what is mandated is that service be made in a manner which reasonably insures actual receipt of the subpoena. *See King v. Crown Plastering Corp.*, 170 F.R.D. at 356. Whether or not a potential deponent in the position of Mr. Dagenhart was served “hand-to-hand” becomes a moot point from a practical perspective.

The only Colorado federal case to squarely focus on this issue is *Windsor v. Martindale* 175 F.R.D. 665, 669-70 (D. Colo. 1997). In that case the court addressed service by a prisoner plaintiff via his own private mailing as well as service made by certified mailing initiated by the U.S. Marshals Service. The court in *Windsor* quashed subpoenas with attempted mail service by the plaintiff. However, service by certified mail undertaken by the United States Marshals Service was upheld as an acceptable variation of permissible service. The court noted that

[d]ue to limited staff and budget constraints, certified mail is used for service by the United States Marshals Service on many pleadings. [The deponents] have not

argued that they did not get the subpoenas. They simply maintain that they should not have to respond, as the subpoenas were mailed.

Id. at 670. Key to the *Windsor* court's decision to uphold the service by certified mail was the fact the deponent had actual notice of the subpoena. The court stated,

Service by certified mail by the United States Marshals Service provides a fair and economical means of serving process. There has been no denial of due process of law by such service. (citations omitted) The subpoenas duces tecum to [the deponents] cannot be quashed solely on the basis that they were served by the United States Marshals Service by mail.

Id. The court's determination regarding proper service was largely driven by effectuating the purposes of the Rule, the constraints of due process and the underlying posture of the particular case. *See also* 9 Moore's Federal Practice 3d at § 45.21(1) ("Requiring personal service of a subpoena . . . seems unduly restrictive . . . The apparent purpose of the service requirement is to ensure receipt, so that notice will be provided to the recipient.")

This action in Colorado was initiated by Mr. Dagenhart protesting his appearance as subpoenaed by the Rigsbys and seeking a protective order. The very filing of the motion and petition to the court reflect that Mr. Dagenhart did, in fact, receive "delivery" of the subpoena which he was able to contest on its merits. The court, however, can envision a very different scenario had Mr. Dagenhart failed to appear for the subpoenaed deposition on April 11, 2008 and the Rigsbys brought the action in Colorado to compel the attendance of Mr. Dagenhart. This was precisely the alternate position faced by the Georgia court mentioned earlier where personal service of a Rule 45 subpoena was held to be required. *Klockner Namasco*, 211 F.R.D. at 686. In the first instance, whether Mr. Dagenhart received hand-to-hand personal service is somewhat

superfluous – clearly he had notice of the subpoena and an opportunity to respond without any prejudice or fear of sanctions. In the second instance, however, whether and how service of the subpoena was made would be critical to the determination of whether the intended recipient of a subpoena would face sanctions for his failure to appear.

In accordance with the interpretative principle that the Federal Rules of Civil Procedure “be construed and administered to secure the just, speedy, and inexpensive determination of every action,” Fed. R. Civ. P. 1, and given the textual ambiguity of Rule 45 combined with the fact the Mr. Dagenhart frequently travels out of state and cannot be readily or easily located to effect hand-to-hand personal service, and considering the cost and delay that would result by requiring further attempts at such service, this Court thus joins those holding that effective service under Rule 45 is not limited to hand-to-hand personal service in every case. The Federal Rules should not be construed as a shield for a witness who is purposefully attempting to evade service, as it appears Mr. Dagenhart may be as evidenced by the lack of cooperation on his part to suggest alternate venues and dates. Because the alternative service used here accomplished the goal of actual receipt of the subpoena by the witness,¹ the “delivery” requirement of Rule 45 has been met, and Mr. Dagenhart has been provided with fair and timely notice of his obligation to produce documents. Further, permitting service of the deposition subpoena to Mr. Dagenhart by less than personal, but nonetheless effective service, in no way prejudices Mr. Dagenhart since he has been

¹This order does not stand for the proposition that the particular form of service employed in this case would always meet the test of reasonable assurance of receipt by the deponent pursuant to Fed. R. Civ. P. 45, but only that it did in this instance.

fully able to avail himself of the procedural protections of Rule 45(c)(2)(B), the same as he would have been if personally served.

As noted above, deponent's counsel advised during the hearing on April 14, 2008, that Mr. Dagenhart travels extensively. The proponents expressed willingness to hold the deposition at another location specified by the deponent for his convenience, however no alternative venue was suggested or agreed to. In light of the offers made and refused, this court concludes that appearance in Denver, Colorado, approximately thirty miles north of Mr. Dagenhart's residence, is not an undue hardship.

It is therefore ORDERED "Petitioner's Combined Motion to Quash Deposition Subpoena, and Motion for Protective Order" [Doc. No. 1] is DENIED. The deponent, John Dagenhart, is ORDERED to appear on April 25, 2008 at 9:00 a.m. for the taking of testimony at the offices of Holland & Hart, LLP, 555 Seventeenth Street, Suite 3200, Denver, Colorado 80202, as set forth in the amended deposition subpoena,

Dated this 17th day of April, 2008.

BY THE COURT:

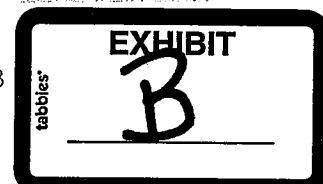
s/ Kathleen M. Tafoya
KATHLEEN M. TAFOYA
United States Magistrate Judge

EXHIBIT B

MERRILL LEGAL SOLUTIONS
Court Reporting * Legal Videography * Trial Services

Page 1	Page 3
1 IN THE UNITED STATES DISTRICT COURT	1 Battle, Esq., the original transcript of
2 FOR THE NORTHERN DISTRICT OF ALABAMA	2 the oral testimony taken the 15th day of
3 SOUTHERN DIVISION	3 May, 2008.
4	4 Please be advised that this is
5	5 the same and not retained by the Court
6	6 Reporter, nor filed with the Court.
7 CIVIL ACTION NO.: 2:06-CV-1752-WMA	7
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9 E.A. RENFROE & COMPANY, INC.,	9
10 Plaintiff,	10
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1 STIPULATIONS	1 APPEARANCES
2 IT IS STIPULATED AND AGREED	2
3 by and between the parties through their	3 FOR THE PLAINTIFF:
4 respective counsel that the deposition of	4
5 JOHN DEGANHART may be taken before Lane	5 Barbara Ellis Stanley, Esq.
6 C. Butler, a Court Reporter and Notary	6 HELMS & GREENE
7 Public for the State at Large, at the law	7 One City Centre, Suite 1290
8 offices of Sirote & Permutt, 2311	8 1021 Main Street
9 Highland Avenue South, Birmingham,	9 Houston, Texas 77002
10 Alabama, on the 15th day of May, 2008,	10
11 commencing at approximately 2:08 p.m.	11 Victoria L. Helms, Esq.
12 IT IS FURTHER STIPULATED	12 HELMS & GREENE
13 AND AGREED that it shall not be necessary	13 115 Perimeter Center Place, Suite 635
14 for any objections to be made by counsel	14 Atlanta, Georgia 30346
15 to any questions except as to form or	15
16 leading questions and that counsel for	16 FOR THE DEFENDANTS:
17 the parties may make objections and	17
18 assign grounds at the time of trial or at	18 Robert E. Battle, Esq.
19 the time said deposition is offered in	19 BATTLE, FLEENOR, GREEN, WINN & CLEMMER
20 evidence, or prior thereto.	20 1150 Financial Center
21 In accordance with the Federal	21 505 North 20th Street
22 Rules of Civil Procedure, I, Lane C.	22 Birmingham, Alabama 35203
23 Butler, am hereby delivering to Robert E.	23 Job #58370



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1 you had with Cori after the conversation
 2 you had in that off- -- in the office,
 3 was that placed by you or placed by Cori?
 4 A. That was placed by her.
 5 Q. Okay. Prior to the 20/20 show
 6 being aired in August of 2006, did you
 7 ever become aware that Kerri and Cori had
 8 alleged that State Farm had fraudulently
 9 handled claims files?
 10 MR. BEERS: Object to the form.
 11 MS. HELMS: Object to form.
 12 A. Other than the things I was
 13 seeing in the paper that Mr. Scruggs was
 14 providing to the paper down there, I -- I
 15 can't think of any. That -- that was
 16 really -- that seemed to really be the
 17 source of that type of conversation.
 18 Q. (By Mr. Battle) Are you aware of
 19 whether any investigation was done by
 20 State Farm into the allegations of fraud
 21 related to claims handling?
 22 MR. BEERS: John, I will
 23 instruct you to not respond to that

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1 question if it would, you know, invade
 2 attorney-client privileged communication.
 3 MS. HELMS: Object to form.
 4 A. I'm going to -- I can't answer
 5 because that would reveal privileged
 6 information.
 7 Q. (By Mr. Battle) Okay. Were you
 8 interviewed as part of any type of
 9 investigation conducted by State Farm
 10 into the allegations of fraud in the
 11 claims handling?
 12 MS. HELMS: Object to form.
 13 MR. BEERS: Object and instruct
 14 him not to answer.
 15 A. I can't answer that without
 16 revealing privileged information.
 17 Q. (By Mr. Battle) Do you know
 18 whether that investigation, or any
 19 investigation by State Farm into the
 20 allegations of fraud regarding claims
 21 handling, has been completed?
 22 MS. HELMS: Object to form.
 23 MR. BEERS: Same objection and

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1 instruction not to answer.
 2 A. I can't answer that without
 3 revealing privileged information.
 4 Q. (By Mr. Battle) Do you know
 5 whether any employees of State Farm has
 6 been -- have been disciplined as a result
 7 of the allegations of fraud involved in
 8 the claims handling?
 9 MR. BEERS: Same -- same
 10 objection, same instruction.
 11 MS. HELMS: Object to form.
 12 A. I can't answer that without
 13 revealing privileged information.
 14 Q. (By Mr. Battle) Did you ever
 15 independently, you as Mr. Deganhart, do
 16 anything to investigate as to whether the
 17 allegations of fraud that you became
 18 aware of in the claims handling were true
 19 or not?
 20 MS. HELMS: Object to form.
 21 MR. BEERS: Object to the form.
 22 A. I made no independent
 23 investigation having to do with any of

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1 these allegations that Mr. Scruggs was
 2 placing in the newspaper.
 3 Q. (By Mr. Battle) Did you talk to
 4 any Renfroe employees about the Rigsbys'
 5 allegations of fraud involved in the
 6 claims handling on the Katrina project by
 7 State Farm?
 8 MR. BEERS: Object to the form.
 9 MS. HELMS: Object to form.
 10 A. I don't remember ever having a
 11 conversation with any Renfroe employees
 12 about any allegations of wrongdoing on
 13 the part of State Farm, no.
 14 Q. (By Mr. Battle) Do you remember
 15 any Renfroe employees calling to see what
 16 was going on with Kerri and Cori in the
 17 months of June 2006 or July 2006?
 18 A. I don't remember a call from any
 19 Renfroe employee to ask that.
 20 Q. Okay. Did you make any calls to
 21 any Renfroe employees during that time
 22 period?
 23 MS. HELMS: Object to form.

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1 Rigsbys?	1 those questions of Mr. Deganhart as well
2 MS. HELMS: Object to form.	2 as a 30(b)(6), then.
3 MR. BEERS: Same objection.	3 MR. BATTLE: Okay.
4 A. No, not in any official	4 Q. (By Mr. Battle) Do you know
5 capacity. But there was a lot of	5 sitting here today whether the
6 conversation, I can assure you, in our	6 allegations of fraud that you're aware of
7 office the following day.	7 made by the Rigsbys are true or not?
8 Q. (By Mr. Battle) Okay. And what	8 MS. HELMS: Object to form.
9 was the substance of that conversation,	9 MR. BEERS: Same objection.
10 to the extent you can recall?	10 Instruct not to answer.
11 MS. HELMS: Object to form.	11 MS. HELMS: Object to form.
12 A. People were shocked, surprised,	12 Q. (By Mr. Battle) Is there any
13 disappointed. Some people were angry,	13 policy of State Farm, to your knowledge,
14 but nothing -- nobody was -- nobody	14 that prevents an adjuster from providing
15 seemed very angry. It was more	15 information to the U.S. government as
16 disappointment and -- and shock and	16 part of a qui tam case?
17 surprise that someone would do that.	17 MS. HELMS: Object to form.
18 Q. Okay. When you say "that	18 MR. BEERS: Object to the form.
19 someone would do that," what are you	19 A. I'm not aware of anything.
20 talking about?	20 Q. (By Mr. Battle) Okay. What
21 A. That they would go on television	21 about providing claims information to an
22 and malign State Farm that way.	22 attorney for a policyholder if there's a
23 Q. Are you familiar with there	23 belief that there's been fraud involved

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1 being multiple engineering reports on a	1 in the mishandling of claims?
2 single claim related to the Katrina	2 MR. BEERS: Object to the form.
3 project?	3 MS. HELMS: Object to form.
4 MR. BEERS: Going to object and	4 A. Please rephrase the sentence.
5 going to instruct him not to answer that.	5 Q. (By Mr. Battle) Sure.
6 We're back where we were with Mr. Randel,	6 A. Or rephrase the question for me,
7 and same objections, same reasons, and on	7 please.
8 the record with Mr. Randel.	8 Q. Does State Farm have any policy
9 MR. BATTLE: Okay. And so any	9 that prevents an adjuster from providing
10 probing into that area about what he	10 claims information to an attorney for a
11 knows as far as any potential mishandling	11 policyholder if they believe that there
12 of claims, you're instructing him not to	12 has been fraud in the handling of the
13 answer.	13 claim?
14 MR. BEERS: That's correct. For	14 MS. HELMS: Who's "they"?
15 the same reasons stated with Mr. Randel.	15 MR. BEERS: Object to form.
16 MR. BATTLE: Okay. And if Judge	16 MS. HELMS: Object to form.
17 Acker determines that we can ask those	17 MR. BATTLE: An adjuster.
18 questions, then you'll be willing to	18 A. That's so speculative it's hard
19 bring Mr. Deganhart back if -- if Judge	19 for me to -- to come to an answer. If
20 Acker allows us to do that?	20 a -- if a claims adjuster discovers fraud
21 MR. BEERS: If he -- if he also	21 on the part of another employee at State
22 addresses the fact that any such	22 Farm, they do have a responsibility to
23 questions you're entitled to -- to ask	23 report that to the company, to their

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<p>1 manager or to a manager above that, or to 2 a -- an outside vendor who will accept 3 those -- that information for us and will 4 move it to the appropriate place. As far 5 as reporting it outside the company, I -- 6 I'm aware of no -- nothing that would -- 7 nothing within the policies I'm aware of 8 that would keep an adjuster from 9 reporting information like that to the 10 proper authorities. 11 Q. (By Mr. Battle) Okay. And who 12 do you consider to be the proper 13 authorities? 14 MS. HELMS: Object to form. 15 MR. BEERS: Same objection. 16 A. I -- it's hard to say. Based on 17 this construct that you've given me, I -- 18 I don't know -- I don't know who that 19 would be. 20 Q. (By Mr. Battle) Okay. So if 21 there's a suspicion of fraud relating to 22 the handling of a State Farm claim, the 23 adjuster should report it to State Farm</p>	<p>1 policy that would prevent that? 2 A. I'm -- 3 MS. HELMS: Object to form. 4 MR. BEERS: Object to the form. 5 A. -- not aware of any policy that 6 would prevent that, either. 7 Q. (By Mr. Battle) Are you familiar 8 with the term "engineering roster"? 9 MS. HELMS: Object to form. 10 A. I think I know what you mean. 11 I'm not exactly sure that's what it was 12 called. 13 Q. Okay. What -- what is an 14 engineering roster, and what should it be 15 called? 16 A. I -- I'm -- I'm not sure. This 17 was something that -- and -- and correct 18 me if I'm wrong, if I have misunderstood 19 your question. But it was a -- a way we 20 used in -- on the Coast to just manage 21 who we assigned engine -- or made 22 engineering assignments to. 23 Q. Okay. Is -- and -- and I</p>
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<p>1 and it's also okay to report it to the 2 proper authorities; is that your 3 testimony? 4 MR. BEERS: Object to the form. 5 MS. HELMS: Object to form. 6 A. I would say that pretty much 7 reflects what I've said, yes. If they -- 8 if they recognize fraud on the part of a 9 State Farm employee, they would report 10 that accordingly. 11 Q. And would that proper authority 12 include a lawyer for the policyholder 13 upon whom the fraud may have been had? 14 MR. BEERS: Object to the form. 15 MS. HELMS: Object to form. 16 A. I'm not a lawyer. I'm not the 17 right person to ask that question to. 18 Q. (By Mr. Battle) Okay. And I'm 19 just asking for your understanding of 20 State Farm's policy. 21 A. I'm not aware of any policy with 22 respect to that. 23 Q. Okay. Are you aware of any</p>	<p>1 understand that's what you understand an 2 engineering roster to be. Who owns that 3 engineering roster? Is that State Farm 4 property? 5 MR. BEERS: Object to the form. 6 MS. HELMS: Object to form. 7 A. In my view, yes, I would 8 consider that State Farm property. 9 Q. (By Mr. Battle) Okay. And what 10 about are you familiar with the term "cat 11 manual"? 12 MS. HELMS: Object to form. 13 MR. BEERS: Object to the form. 14 A. You'll have to -- I -- I'm not 15 -- no, I -- it's not something in my 16 normal use. 17 MS. HELMS: Can we go off the 18 record for a moment, please? 19 MR. BATTLE: Yeah. 20 MS. HELMS: Are you about to 21 show him a restricted document? 22 THE VIDEOGRAPHER: One second. 23 We're going off the record. The time is</p>

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<p>1 3:30 -- is 3:58 p.m. 2 (Break taken.) 3 THE VIDEOGRAPHER: We are back 4 on the record. The time is 4:14 p.m. 5 MR. BEERS: Okay. Back on the 6 record. Let the record reflect that the 7 last question propounded to Mr. Deganhart 8 was a question inquiring whether or not 9 he knew what a -- of a cat manual, what a 10 cat manual was. And his response was in 11 the negative. At that time counsel for 12 the Rigsbys was marking for 13 identification a document that has been 14 identified as one of the restricted 15 documents pursuant to Judge Acker's order 16 dated the 10th of October, 2007, in this 17 matter. 18 In reviewing of this order, it 19 clearly identifies the fact that 20 Mr. Deganhart or counsel for State Farm 21 would not be one of the parties available 22 for proper review and inspection of these 23 documents. There is a provision that may</p>	<p>1 prevent and instruct Mr. Deganhart that 2 he is not to review this document at this 3 time and that we take this up with Judge 4 Acker to see if some provisions can be 5 made with regards to counsel's inquiry 6 regarding this document of this witness, 7 specifically especially since this 8 witness is just an individual witness, 9 he's not a company 30(b)(6) witness, and 10 he's already identified the fact that 11 he's not familiar with such a document 12 named cat manual. I understand counsel 13 could possibly refresh his recollection. 14 But because of these circumstances, I 15 would request that we move on and just 16 reserve this for inquiry with the judge. 17 MR. BATTLE: Okay. And I think 18 you've accurately stated our position, 19 that under the order entered by Judge 20 Acker as it relates to the restricted 21 documents, we are allowed to show 22 witnesses, nonparties any of these 23 restricted documents. My intent was to</p>

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<p>1 allow counsel for the Rigsbys to inquire 2 of witnesses being deposed under oath 3 about certain restricted documents; 4 however, it also provides an 5 acknowledgment of those persons that they 6 are not to disclose the contents to 7 anyone not specified as permitted to view 8 them. 9 Those provisions within Judge 10 Acker's order gives me great pause as 11 counsel for State Farm; specifically, the 12 fact that in representing Mr. Deganhart 13 here on behalf of State Farm, the record 14 should reflect that I'm also serving as 15 counsel in defense of the qui tam false 16 claims act over in the state of 17 Mississippi and fearful of the fact that 18 without further clarification from Judge 19 Acker or provisions, unique provisions 20 entered by Judge Acker with regards to 21 the disclosure of this document in my 22 presence puts us in a -- in a situation 23 to which it calls me to at this time just</p>	<p>1 show not only this particular document 2 that none of you have seen before we took 3 the break, but potentially other 4 documents as well that I think this 5 witness would have some knowledge about 6 that I'd like to ask questions about that 7 would impact our defense of this case. 8 And so I understand that we have 9 agreed at this point that we will just 10 take the issue up with Judge Acker. But 11 again, I believe that, you know, I would 12 have a right today to do that, and so I 13 just want to make sure there's an 14 agreement on your side that if Judge 15 Acker so rules that I can do this, that 16 you will bring Mr. Deganhart back to 17 complete that portion of the deposition. 18 MR. BEERS: Yeah. Once we can 19 work the provisions out with Judge Acker 20 to, you know, resolve these concerns and 21 issues with regards to my representation 22 as counsel of both Mr. Deganhart and the 23 company in these two actions.</p>

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1 MR. BATTLE: Right. And this is
2 one issue, and I know we've talked about
3 two others in this deposition: Those are
4 questions about any type of investigation
5 done by State Farm that relate to that
6 make --
7 MR. BEERS: Yes.
8 MR. BATTLE: -- and then also
9 questions about what he may or may not
10 know about mishandling of claims related
11 to the Katrina project.
12 MR. BEERS: That's correct.
13 MR. BATTLE: And we are going to
14 put those issues in front of Judge Acker
15 if necessary, and if Judge Acker believes
16 we are allowed to ask those questions of
17 Mr. Deganhart, then y'all will bring
18 Mr. Deganhart back.
19 MR. BEERS: If Judge Acker
20 rules, then we will obviously comply with
21 his order.
22 MR. BATTLE: Okay.
23 Q. (By Mr. Battle) Have you been

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1 represented by any other attorneys in any
2 litigation arising out of the State Farm
3 Katrina claims handling other than
4 Mr. Beers?
5 A. As a -- I -- I'm not personally
6 represented, if that's what you're
7 asking.
8 Q. Okay.
9 A. No.
10 Q. Has anyone on behalf of State
11 Farm --
12 A. Yes.
13 Q. -- represented you? Who else?
14 A. John Banahan with respect to
15 McIntosh.
16 Q. Okay. Anyone else?
17 A. No, I don't think so.
18 Q. Either of the two lawyers you
19 met with yesterday that you couldn't
20 remember their names?
21 A. No. Neither of those two, no.
22 Q. Do you remember their names now?
23 A. Peter, don't remember last name.

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1 Jeff, don't remember last name. And I'm
2 ashamed of myself because I should.
3 Q. Okay. And those are State Farm
4 lawyers?
5 A. I don't think so, no.
6 Q. Okay.
7 A. Not -- you mean State Farm
8 employee, staff-type lawyers? No.
9 Q. No, no. Not in-house lawyers,
10 but lawyers representing State Farm
11 generally, outside lawyers, sort of like
12 Mr. Beers?
13 A. Yes. Yes.
14 MR. BATTLE: I didn't want to
15 have to get into any issues there.
16 Q. Where are you working now?
17 A. Dallas, Texas.
18 Q. How long have you been there?
19 A. Since the beginning of February
20 of this year.
21 Q. Okay. Is that where Mr. Randel
22 has been working as well?
23 A. He is working there, or he is

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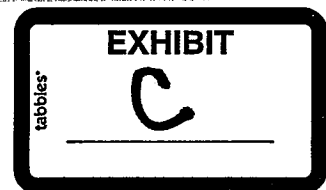
1 assigned to that project now. He just
2 began within the last -- about a month
3 he's been there.
4 Q. Okay. Have you spoke to Lecky
5 King at all since she left State Farm?
6 A. I was not aware Lecky King had
7 left State Farm.
8 Q. I thought that I had heard that.
9 Maybe I misheard that. Is she still
10 working for State Farm?
11 MR. BEERS: If you know.
12 A. As far as I know. I -- I don't
13 stay in regular contact with Lecky.
14 Q. Okay.
15 A. I.
16 Q. Did she work with you as part of
17 the Katrina project?
18 A. Well, she was more associated
19 with the Gulfport office, and I was
20 pretty much attached to the Biloxi
21 office. So we did cross paths, but we
22 didn't really work together.
23 Q. Okay. And what was her job

EXHIBIT C

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Page 1	Page 3
1 IN THE UNITED STATES DISTRICT COURT	1 Battle, Esq., the original transcript of
2 FOR THE NORTHERN DISTRICT OF ALABAMA	2 the oral testimony taken the 15th day of
3 SOUTHERN DIVISION	3 May, 2008.
4	4 Please be advised that this is
5	5 the same and not retained by the Court
6	6 Reporter, nor filed with the Court.
7 CIVIL ACTION NO.: 2:06-CV-1752-WMA	7
8	8
9 E.A. RENFROE & COMPANY, INC.,	9
10 Plaintiff,	10
11	11
12 v.	12
13	13
14 CORI RIGSBY, et al.,	14
15 Defendants.	15
16	16
17	17
18 DEPOSITION TESTIMONY OF:	18
19 DAVE RANDEL	19
20 May 15, 2008	20
21	21
22	22
23 Job #58370	23

Page 2	Page 4
1 STIPULATIONS	1 APPEARANCES
2 IT IS STIPULATED AND AGREED	2
3 by and between the parties through their	3 FOR THE PLAINTIFF:
4 respective counsel that the deposition of	4
5 DAVE RANDEL may be taken before Lane C.	5 Barbara Ellis Stanley, Esq.
6 Butler, a Court Reporter and Notary	6 HELMS & GREENE
7 Public for the State at Large, at the law	7 One City Centre, Suite 1290
8 offices of Sirote & Permutt, 2311	8 1021 Main Street
9 Highland Avenue South, Birmingham,	9 Houston, Texas 77002
10 Alabama, on the 15th day of May, 2008,	10
11 commencing at approximately 9:00 a.m.	11 Victoria L. Helms, Esq.
12 IT IS FURTHER STIPULATED	12 HELMS & GREENE
13 AND AGREED that it shall not be necessary	13 115 Perimeter Center Place, Suite 635
14 for any objections to be made by counsel	14 Atlanta, Georgia 30346
15 to any questions except as to form or	15
16 leading questions and that counsel for	16 FOR THE DEFENDANTS:
17 the parties may make objections and	17
18 assign grounds at the time of trial or at	18 Robert E. Battle, Esq.
19 the time said deposition is offered in	19 BATTLE, FLEENOR, GREEN, WINN & CLEMMER
20 evidence, or prior thereto.	20 1150 Financial Center
21 In accordance with the Federal	21 505 North 20th Street
22 Rules of Civil Procedure, I, Lane C.	22 Birmingham, Alabama 35203
23 Butler, am hereby delivering to Robert E.	23 Job #58370



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1 Videotape No. 2. We are back on the
 2 record. The time is 11:20 a.m.
 3 Q. (By Mr. Battle) Mr. Randel, if a
 4 policyholder wants to see their claims
 5 file, does State Farm allow them to do
 6 that, to your knowledge?
 7 MR. BEERS: Bob, before you ask
 8 that question, I think Dave needs to
 9 supplement his last answer with regards
 10 to your question regarding the
 11 performance issue.
 12 MR. BATTLE: Okay.
 13 Q. (By Mr. Battle) After -- did you
 14 consult with your lawyers during the
 15 break?
 16 A. I consulted with my lawyers to
 17 the extent that I wasn't sure that one
 18 other part of their performance was
 19 included in the way you asked the
 20 question.
 21 MR. BEERS: So could you
 22 rephrase the question?
 23 Q. Okay. Would you like to

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1 supplement your answer from the question
 2 before the break related to the
 3 performance of Cori and Kerri?
 4 A. As I understand, the question
 5 that you asked was what did I think of
 6 their performance and were there any
 7 issues with regard to their performance
 8 while working for Renfroe during
 9 Hurricane Katrina. And there was one
 10 other issue that came up during the
 11 course of their working on Hurricane
 12 Katrina, and that issue involved Cori
 13 having a conversation with someone about
 14 her mother's claim.
 15 That issue came to my attention,
 16 and I asked the -- a team manager to have
 17 a conversation with Cori to let her know
 18 that it was inappropriate for her to
 19 become involved in any way with the
 20 handling of her mother's claim.
 21 Q. Okay. And you said Cori had a
 22 conversation with someone regarding her
 23 mother's claim. Who was "someone"?

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1 A. I -- I don't know.
 2 Q. Okay. Did you then talk to Cori
 3 about this at all?
 4 A. I didn't personally talk to
 5 Cori.
 6 Q. Okay.
 7 A. As I recall, I asked the team
 8 manager that brought it to my attention
 9 to have a conversation with Cori and make
 10 sure that she understood that involving
 11 herself in the handling of her mother's
 12 claim was inappropriate.
 13 Q. And you don't know who that team
 14 manager was?
 15 A. Well, the team manager that
 16 brought it to my attention was Rick
 17 Moore, to the best of my recollection.
 18 Q. Okay. And he's a State Farm
 19 team manager?
 20 A. Yes, Rick Moore is a catastrophe
 21 services team manager.
 22 Q. Okay. And other than that
 23 additional thought, is there anything

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1 else that you want to -- to supplement
 2 your previous answer with?
 3 A. Not that I can recall at this
 4 time.
 5 Q. Okay. If something comes to
 6 mind later on, feel free to -- to let me
 7 know.
 8 A. I will do that. Thank you.
 9 Q. Were -- if a policyholder wanted
 10 to see their claims file, would State
 11 Farm allow them to do that, to the best
 12 of your knowledge?
 13 A. To the best of my knowledge, it
 14 would depend on the circumstances upon
 15 which they were asking that. And in
 16 some -- in most of those circumstances,
 17 we would go to counsel and ask advice for
 18 counsel about what we should and should
 19 not show to a policyholder.
 20 Q. Okay. Have you ever shared a
 21 claims file with a policyholder?
 22 MR. BEERS: Object to the form,
 23 shared claims file.

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<p>1 A. I don't know.</p> <p>2 Q. I assume Mr. Deganhart would be</p> <p>3 a better person to ask that question.</p> <p>4 MR. BEERS: Object to the form</p> <p>5 of that question.</p> <p>6 MS. HELMS: Object to form.</p> <p>7 Q. (By Mr. Battle) Did you ever</p> <p>8 find out that the Rigsbys had been placed</p> <p>9 on suspension with pay?</p> <p>10 MR. BEERS: Again, I'll instruct</p> <p>11 you not to reveal any attorney-client</p> <p>12 communication --</p> <p>13 A. I can't --</p> <p>14 MR. BEERS: -- in response to</p> <p>15 that.</p> <p>16 A. I can't respond to that question</p> <p>17 without revealing privilege.</p> <p>18 Q. Did State Farm conduct any</p> <p>19 investigation into the allegations made</p> <p>20 by Kerri and Cori?</p> <p>21 MR. BEERS: Object to the form.</p> <p>22 If you -- if you know. And again, I</p> <p>23 instruct you, if you only know through</p>	<p>1 THE COURT REPORTER: Mr.</p> <p>2 Finnegan, did you object to that?</p> <p>3 MR. FINNEGAN: I did object.</p> <p>4 THE COURT REPORTER: Thank you.</p> <p>5 Q. (By Mr. Battle) Do you know</p> <p>6 whether anyone from Renfro was ever</p> <p>7 contacted by anyone at State Farm as part</p> <p>8 of the investigation into the allegations</p> <p>9 made by Kerri and Cori?</p> <p>10 MS. HELMS: Object to form.</p> <p>11 MR. BEERS: Same objection.</p> <p>12 Same instruction.</p> <p>13 A. I can't respond to that question</p> <p>14 without revealing privilege.</p> <p>15 Q. (By Mr. Battle) Do you know</p> <p>16 whether anyone from State Farm was ever</p> <p>17 disciplined as a result of any</p> <p>18 allegations of fraud related to the</p> <p>19 claims handling after Hurricane Katrina?</p> <p>20 MR. FINNEGAN: Object to the</p> <p>21 form of the question.</p> <p>22 MR. BEERS: Same objections.</p> <p>23 Same instructions.</p>
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<p>1 counsel, then I instruct you not to</p> <p>2 breach any privilege.</p> <p>3 A. I can't respond without</p> <p>4 revealing privilege.</p> <p>5 Q. Did you provide any information</p> <p>6 as to any inquiries to any type of</p> <p>7 internal investigation conducted by State</p> <p>8 Farm?</p> <p>9 MR. BEERS: Object.</p> <p>10 MS. HELMS: Object to form.</p> <p>11 MR. BEERS: Object. That's</p> <p>12 privileged and instruct you not to</p> <p>13 answer.</p> <p>14 A. I can't respond without</p> <p>15 revealing privilege.</p> <p>16 Q. (By Mr. Battle) Are you aware of</p> <p>17 who may have been interviewed as part of</p> <p>18 any kind of investigation by State Farm?</p> <p>19 MR. BEERS: Same objection.</p> <p>20 Same instruction.</p> <p>21 MS. HELMS: Object to form.</p> <p>22 A. I can't respond to that question</p> <p>23 without revealing privilege.</p>	<p>1 MS. HELMS: Object to form.</p> <p>2 A. I can't respond without</p> <p>3 revealing privilege.</p> <p>4 Q. (By Mr. Battle) Did you see the</p> <p>5 20/20 show when it aired in August of</p> <p>6 2006 with Kerri and Cori Rigsby?</p> <p>7 A. To the best of my recollection,</p> <p>8 I saw most of it. There may have been</p> <p>9 some parts of it that I wasn't able to</p> <p>10 see all of.</p> <p>11 Q. Okay. What was your reaction</p> <p>12 after you saw it?</p> <p>13 MR. FINNEGAN: Object to the</p> <p>14 form.</p> <p>15 MR. BEERS: Object to the form.</p> <p>16 MS. HELMS: Object to form.</p> <p>17 A. Well, can -- can you repeat the</p> <p>18 question for me?</p> <p>19 Q. (By Mr. Battle) What was your</p> <p>20 reaction to the 20/20 show with Kerri and</p> <p>21 Cori?</p> <p>22 MR. BEERS: Same objection.</p> <p>23 MR. FINNEGAN: Objection.</p>

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<p>1 MS. HELMS: Object to form. 2 A. Well, as I recall, my reaction 3 was that I understood that Kerri and Cori 4 had, what I thought, inappropriately 5 taken documents. So I was disappointed 6 with them for having provided those 7 documents that they took from [sic] the 8 media, because I ob- -- obviously felt 9 like what they were saying to the media 10 was inaccurate. 11 Q. (By Mr. Battle) Okay. Why did 12 you think it was inaccurate? 13 MS. HELMS: Object to form. 14 MR. BEERS: Same objection. 15 A. It's been a long time since I've 16 seen that 20/20 piece. But they were 17 portraying State Farm and the operations 18 that we had along the Gulf Coast as doing 19 things that were inappropriate, and 20 having firsthand knowledge of those 21 operations, I knew that to be wrong. 22 Q. (By Mr. Battle) Okay. So were 23 you aware of anything that was</p>	<p>1 My responsibilities are managing the 2 operations and managing the people. And 3 if there was follow-up to be done on 4 allegations like that, I would not have 5 done that personally. 6 Q. (By Mr. Battle) Did you ever 7 become aware that there were multiple 8 engineering reports being produced on one 9 claim? 10 MR. BEERS: Okay, let's -- 11 MR. FINNEGAN: Object to the 12 form of the question. 13 MS. HELMS: Object to form. 14 MR. BEERS: Let's -- let's stop 15 right here and let me put on the record, 16 Bob, I think we're getting into those 17 areas that are at issue presently before 18 your clients and State Farm with regards 19 to subpoenas issued in Illinois. We have 20 objected, we have sought protective order 21 with regards to various areas of inquiry 22 that we feel are not relevant or 23 privileged or for other reasons. I think</p>
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<p>1 inappropriate that was going on regarding 2 claims files in southern Mississippi at 3 that time? 4 MS. HELMS: Object to form. 5 MR. FINNEGAN: Object to the 6 form of the question. 7 MR. BEERS: Same objection. 8 A. As I know it, there -- I don't 9 believe there was anything inappropriate 10 going on with the handling of the claim 11 files for Hurricane Katrina. 12 Q. (By Mr. Battle) Okay. Did you 13 do anything personally to investigate 14 whether there was any wrongdoing in the 15 handling of claims related to Hurricane 16 Katrina in southern Mississippi? 17 MR. FINNEGAN: Object to the 18 form of the question. 19 MS. HELMS: Object to form. 20 MR. BEERS: Object to the form. 21 A. I did not do anything 22 personally. That's not what I would have 23 considered part of my responsibilities.</p>	<p>1 those motions and objections and -- and 2 -- are being transferred to Judge Acker, 3 and at some point in time we will have to 4 address that with Judge Acker, and the 5 company may have to, you know, tender a 6 witness at that point in time. 7 But we object, and I'm going to 8 instruct him not to go into those areas, 9 because with those motions in play 10 presently, I don't think it's appropriate 11 to try to back-door inquiries and solicit 12 information when those areas of inquiry 13 are before Judge Acker at this time. 14 MR. BATTLE: Okay. And I 15 understand. He's here personally, and 16 I'm asking for his personal knowledge 17 about these things. 18 MR. BEERS: Well, I -- I 19 understand. But it -- it's -- it's 20 dealing with areas that we feel like we 21 have posed appropriate, legitimate 22 objections to on behalf of the company. 23 And -- and until such time as Judge Acker</p>

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<p>1 has an opportunity to fully receive and</p> <p>2 review our briefs and call for possibly</p> <p>3 for oral arguments to where we can</p> <p>4 address those issues, then I -- I think</p> <p>5 that it's not proper at this point in</p> <p>6 time to -- to bring in a -- an employee</p> <p>7 of State Farm and try to seek that same</p> <p>8 inquiry with -- with those objections</p> <p>9 presently pending. And we have sought a</p> <p>10 protective order, and that is before the</p> <p>11 judge. And -- and so again, if -- if we</p> <p>12 -- if the judge rules against us with</p> <p>13 regards to those areas of inquiry, then</p> <p>14 -- then, you know, we may have to be</p> <p>15 before you and tender a witness to answer</p> <p>16 responsively those questions.</p> <p>17 MR. BATTLE: Okay. And in</p> <p>18 addition, it may be that I want to know</p> <p>19 about his personal knowledge of these</p> <p>20 things, so it may be that it would be</p> <p>21 more than a 30(b)(6) witness that I'd</p> <p>22 like to depose. I may want to have</p> <p>23 Mr. Randel come back at the appropriate</p>	<p>1 regardless of what happens after today,</p> <p>2 if some other witness shows up for any</p> <p>3 kind of testimony in this case, I will</p> <p>4 maintain Renfro's objection that claims</p> <p>5 handling practices have nothing to do</p> <p>6 with this case.</p> <p>7 MR. BATTLE: And, you know, I</p> <p>8 respectfully disagree, and -- and we will</p> <p>9 fight that battle when it comes.</p> <p>10 MR. BEERS: Thank you.</p> <p>11 Q. (By Mr. Battle) Have you ever</p> <p>12 taken the Fifth Amendment privilege as it</p> <p>13 relates to anything that has transpired</p> <p>14 in this Hurricane Katrina litigation?</p> <p>15 MR. FINNEGAN: I'm going to</p> <p>16 instruct the witness not to respond to</p> <p>17 that question.</p> <p>18 MR. BEERS: Same objection and</p> <p>19 instruction.</p> <p>20 MR. BATTLE: Okay. And -- and</p> <p>21 why is that?</p> <p>22 MR. FINNEGAN: Well, because it</p> <p>23 implicates a court order that has sealed</p>
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<p>1 time. Are you in agreement to that if</p> <p>2 the Court so orders?</p> <p>3 MR. BEERS: If the Court so</p> <p>4 orders, we will respond to the Court's</p> <p>5 order appropriately.</p> <p>6 MR. FINNEGAN: And I would state</p> <p>7 the same answer to that question. We</p> <p>8 will -- we will respond appropriately to</p> <p>9 whatever develops..</p> <p>10 MR. BATTLE: Okay. And that</p> <p>11 would go to any questions related to what</p> <p>12 he knows about claims handling related to</p> <p>13 the Katrina claims?</p> <p>14 MR. BEERS: That's correct.</p> <p>15 MS. HELMS: I should jump in</p> <p>16 here on behalf of Renfro and state any</p> <p>17 objection to getting into claims handling</p> <p>18 processes in the context of discovery in</p> <p>19 this case. It's simply not relevant.</p> <p>20 MR. BATTLE: But you're not also</p> <p>21 instructing him not to answer?</p> <p>22 MS. HELMS: No, sir, I'm not. I</p> <p>23 just want to make it clear that</p>	<p>1 testimony given by Mr. Randel.</p> <p>2 MR. BATTLE: Okay. Do you have</p> <p>3 a copy of the court order?</p> <p>4 MR. FINNEGAN: I do not have it</p> <p>5 with me.</p> <p>6 MR. BATTLE: Is there a way that</p> <p>7 you could get a copy of the court order?</p> <p>8 MR. FINNEGAN: Well, if -- if --</p> <p>9 if I'm given an appropriate request, I'll</p> <p>10 respond to that appropriately.</p> <p>11 MR. BATTLE: Okay. You know,</p> <p>12 I'm trying to avoid having to come back</p> <p>13 and do more. It sounds like we're going</p> <p>14 to have to fight some battles anyway</p> <p>15 related to that based on the claims</p> <p>16 handling questions that I was getting</p> <p>17 into earlier. So this may be another</p> <p>18 area where we can just agree to disagree.</p> <p>19 Is that what -- I mean, what do you</p> <p>20 recommend doing?</p> <p>21 MR. FINNEGAN: Well, you're, I</p> <p>22 mean, clearly in a position to take, you</p> <p>23 know, whatever position --</p>

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1 MR. BATTLE: Right.
 2 MR. FINNEGAN: -- you want here.
 3 And what I'm saying is we will respond
 4 appropriately to any issue that arises at
 5 an appropriate time and in an appropriate
 6 manner.
 7 MR. BATTLE: Okay, are there any
 8 matters where he has taken the Fifth that
 9 don't implicate that court order?
 10 MR. FINNEGAN: I'm not going to
 11 respond to that. I'm not responding
 12 either way, you know, to that question.
 13 I mean, this is -- I don't think this is
 14 a -- a colloquy we need to engage in on
 15 the record here.
 16 MR. BATTLE: Okay. I'm just
 17 wondering if you have an objection based
 18 on a court order and sealed testimony,
 19 and does that relate to any portion of an
 20 answer to that question? You know what
 21 I'm saying?
 22 MR. FINNEGAN: I'm not really
 23 clear on what you're saying, no. I'm

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1 just saying that there is a court order
 2 sealing a -- a testimony that Mr. Randel
 3 has -- has provided, and I'm not going to
 4 discuss or allow him to discuss,
 5 obviously, the content of that testimony
 6 that is sealed.
 7 MR. BATTLE: Okay. And outside
 8 of that sealed testimony, if we put that
 9 to the side, can I ask the question then,
 10 or are you still going to instruct him
 11 not to answer?
 12 MR. FINNEGAN: No. You can --
 13 you can -- you can ask -- ask that -- ask
 14 that question.
 15 Q. (By Mr. Battle) Within the
 16 confines of what we've discussed,
 17 Mr. Randel, outside of the one particular
 18 matter where there's sealed testimony and
 19 a court order, have you taken the Fifth
 20 in any other -- under -- when you've been
 21 asked questions under oath related to
 22 claims handling in Hurricane Katrina?
 23 MS. HELMS: Object to form.

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1 MR. FINNEGAN: Object to form.
 2 MR. BEERS: Mike, I'm going to
 3 object. Hold on before you answer that.
 4 Let me give that some thought.
 5 MR. FINNEGAN: Can we go off the
 6 record for a second?
 7 MR. BATTLE: Sure.
 8 THE VIDEOGRAPHER: We're going
 9 off the record. The time is 12:05 p.m.
 10 (Break taken.)
 11 THE VIDEOGRAPHER: We are back
 12 on the record. The time is 12:21 p.m.
 13 Q. (By Mr. Battle) Mr. Randel, have
 14 you ever given testimony under oath in
 15 any proceedings that are not under seal
 16 where you took the Fifth Amendment?
 17 A. No, I have not.
 18 Q. Okay. Have you ever given
 19 testimony under oath in any matter where
 20 you took the Fifth Amendment?
 21 MR. FINNEGAN: I'd instruct the
 22 witness not to respond to that question.
 23 Q. Can you identify any matter

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1 where you have taken the Fifth when
 2 you've been asked questions under oath?
 3 MR. FINNEGAN: I'd instruct the
 4 witness not to respond to that question.
 5 MR. BEERS: Same instruction.
 6 MR. BATTLE: Okay. So, I think
 7 we're at a point -- let me just make sure
 8 I understand. Any other matters other
 9 than what he's discussed about where he's
 10 taken the Fifth, we're -- we're at just a
 11 point where we can't go any -- any
 12 further. That's one area. Another area
 13 is --
 14 MR. FINNEGAN: Well, let me
 15 respond to that.
 16 MR. BATTLE: Okay.
 17 MR. FINNEGAN: I mean, the
 18 record speaks for itself. If you have
 19 questions to ask Bob, I mean, ask them.
 20 I mean.
 21 MR. BATTLE: Right. Okay. But
 22 as far as the questions I've asked where
 23 you've instructed him not to answer,

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1 we're at an impasse.
 2 MR. FINNEGAN: Well, I've
 3 instructed him not to answer. He's not
 4 going to answer.
 5 MR. BATTLE: Okay. As far as
 6 any investigation that was done by State
 7 Farm after the Rigsbys came and told
 8 Mr. Randel about the fraud, you have
 9 instructed him not to answer whether
 10 there has been an investigation, who may
 11 have been interviewed, you know, what
 12 types of things were done as part of that
 13 investigation based on an attorney-client
 14 privilege?
 15 MR. BEERS: Yes. If I recall,
 16 my response to the way you phrased the
 17 question is I instructed him not to
 18 breach any attorney-client communication
 19 and privilege that would require him to
 20 respond to that question.
 21 MR. FINNEGAN: And, Bob, just a
 22 comment. I understand you're trying to
 23 determine where you are on a couple of

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1 points here. But your discussion in that
 2 question of the fraud, I mean, obviously
 3 we would object to any --
 4 MR. BATTLE: Right, to the
 5 characterization of fraud.
 6 MR. FINNEGAN: Characterization
 7 of fraud.
 8 MR. BATTLE: Yeah. The
 9 allegations of fraud that were made by my
 10 client may be the better --
 11 MR. FINNEGAN: Right, right.
 12 MR. BATTLE: -- way to put it.
 13 And any questions that I've asked him
 14 about what he knows about -- and, you
 15 know, I think I started getting into
 16 multiple engineering reports in claims
 17 files. You have said that it's something
 18 that you have objected to in the 30(b)(6)
 19 miscellaneous matter, and you are
 20 instructing him not to answer anything
 21 related to the alleged mishandling of
 22 claims in this deposition.
 23 MR. BEERS: That's correct.

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1 MR. BATTLE: And you'd like for
 2 Judge Acker to make a ruling on that
 3 first.
 4 MR. BEERS: Based upon our
 5 reasons behind our objections and our
 6 request for protective order on the
 7 various areas, including that area. I
 8 believe it was Area No. 1 in your
 9 subpoena.
 10 MR. BATTLE: Okay.
 11 MR. BEERS: As far as the area
 12 -- designated areas of testimony for
 13 State Farm.
 14 MR. BATTLE: Okay. And so I
 15 guess the question is, do we -- would you
 16 be willing to bring Mr. Randel back if
 17 the judge says that he needs to answer in
 18 any of those three areas, or should we
 19 get try to get Judge Acker on the phone
 20 today?
 21 MR. BEERS: I think because
 22 these motions and objections have been
 23 briefed and they're being communicated to

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1 Judge Acker, I would like the opportunity
 2 for him to be -- have that opportunity to
 3 review the briefs and also to consider
 4 whether or not he chooses to hear oral
 5 arguments with regards to those issues.
 6 And if his rulings are that our defense
 7 -- objections are not proper and -- and
 8 you claim that you need not only a
 9 30(b)(6) representative testimony in
 10 regard to that but also Mr. Randel's,
 11 then obviously, we'll respond to whatever
 12 the judge rules on that. But at this
 13 point in time, our decision right now is
 14 to instruct him not to answer it. And if
 15 it results in him having to come back
 16 pursuant to the judge's order, then we'll
 17 deal with that.
 18 MR. BATTLE: Okay. And I just
 19 want to understand, especially on the
 20 investigation side, I understand there's
 21 work product privileges that attach to
 22 internal investigations.
 23 MR. BEERS: Right.

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1 MR. BATTLE: And I've got to
2 show a substantial need if I want to get
3 into the actual findings of an
4 investigation. But I also need to know
5 who was -- was interviewed as part of any
6 investigation so that I can have equal
7 access to -- to find out what I need to
8 find out.
9 MR. BEERS: And obviously, if --
10 if Judge Acker rules that that was an
11 appropriate area of inquiry by you, then
12 a 30(b)(6) representative for the company
13 would be the best person to provide that
14 information to you. Certainly,
15 Mr. Randel, who has already responded
16 that for him to answer any of that
17 questioning would breach an
18 attorney-client privilege, then that's
19 not --
20 MR. BATTLE: Okay.
21 MR. BEERS: You see what I'm
22 saying?
23 MR. BATTLE: Yeah.

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1 MR. BEERS: Okay.
2 MR. BATTLE: And so -- yeah.
3 MS. HELMS: And on behalf of
4 Renfroe as well, that sort of information
5 you're seeking has nothing to do with the
6 claims or defenses in this case, and
7 we'll oppose any effort to conduct
8 discovery on it in this case.
9 MR. BATTLE: I understand
10 Renfroe's position on that very well.
11 MS. HELMS: And we may have to
12 seek a motion for protective order
13 ourselves.
14 MR. BATTLE: Okay.
15 Q. (By Mr. Battle) Did you ever
16 have a conversation with Mark Drain
17 outside of your counsel being present
18 where you indicated that State Farm had
19 mishandled claims?
20 MR. FINNEGAN: I'd object to the
21 form of that question.
22 A. I never have indicated to Mark
23 Drain that I thought there was any

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1 misappropriately handling claims by State
2 Farm.
3 Q. Did you ever indicate that to --
4 to anyone outside the presence of
5 counsel?
6 MR. FINNEGAN: Objection.
7 MR. BEERS: Same objection.
8 A. I don't believe that I ever
9 represented to anyone that State Farm has
10 in any way inappropriately handled claims
11 after Hurricane Katrina.
12 Q. (By Mr. Battle) Has any State
13 Farm employee indicated to you that State
14 Farm mishandled claims, outside the
15 presence of your counsel?
16 MR. FINNEGAN: Can I just
17 clarify something --
18 MR. BATTLE: Sure.
19 MR. FINNEGAN: -- that would be
20 helpful? If you're talking about some
21 intentional mishandling as opposed to
22 some inadvertent oversight on a claim.
23 MR. BATTLE: Well, however he

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1 would define it.
2 A. Okay. Can you give me the last
3 question again, please?
4 MR. BATTLE: Can you read back,
5 please.
6 (Requested portion read.)
7 A. I don't recall any State Farm
8 employee that was associated with
9 Hurricane Katrina in any way indicating
10 that there was any mishandling of claims.
11 Q. Okay. Did you ever have in
12 conversations with Mr. Deganhart outside
13 the presence of counsel related to the
14 Rigsbys after they came to your office
15 and made the fraud allegations?
16 A. To the best of my recollection,
17 the only conversation I had with John
18 Deganhart after the Rigsbys told me that
19 they had taken documents was when
20 Mr. Deganhart called me and I was away
21 from the office to tell me that Cori was
22 back in the office several days after
23 they had told me.