

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

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**JUDY M. GUICE**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 1:06cv1 LTS-RHW**

**STATE FARM FIRE AND CASUALTY  
COMPANY**

**DEFENDANT**

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**PLAINTIFF'S RESPONSE TO DAVID RANDEL'S  
MOTION FOR PROTECTIVE ORDER [#186]**

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COMES NOW the Plaintiff, JUDY M. GUICE, and in reply to David Randel's Motion for Protective Order dated January 5, 2007 [Doc. #186], respectfully states as follows:

1.

Randel seeks to have his scheduled January 26, 2007 deposition in this case "sealed until further order of the Court" as was done on an UNOPPOSED motion by the Court's "Text Only Order" of 11/16/2006 in the McFarland case, No. 1:06-932-LTS-RHW. Randel claims he may suffer some prejudice in potential criminal proceedings if he takes the Fifth Amendment as to certain questions, which he states he *may* do. Randel's request that his deposition be sealed and kept from the public is supported by neither the law nor by public policy. The issues addressed in *this* case – issues of alleged post-catastrophe corporate fraud at the home office of the insurance company – are public policy issues of national significance. This much-watched case is no case for secrecy. The motion should be denied.

2.

As this Court's Local Rules make clear, all pleadings and materials filed in this Court are "presumptively in the public domain." Rule 83.6, Uniform District Court Rules of the Northern and Southern Districts of Mississippi. That proceedings be open to the public is particularly important in this case which impacts thousands of Mississippi Gulf Coast citizens insured by the defendant State Farm. This case alleges a top-down, corporate, intentional plan of post-catastrophe insurance fraud which, if proven as the Plaintiff unequivocally asserts it will be, impacts not only citizens of the Gulf Coast, but victims of catastrophes and insurance policyholders nationwide.<sup>1</sup>

3.

Randel's motion rests on his erroneous assertion that "no legitimate purpose" would be served by disclosing the videotape or transcript of Mr. Randel's testimony. Motion for Protective Order, p. 3. In fact, the public has a legitimate, and important, purpose is knowing what is said under oath at the Randel deposition. There is a "legitimate purpose" of having the sworn testimony of participants in the alleged crime/fraud which forms the basis of this suit open to the

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<sup>1</sup> The highly specific and detailed allegations of crime/fraud from which this case arises are set forth in both the First Amended Complaint [Doc. #122] and the pending Motion for Leave to File Second Amended Complaint [#169] and the exhibits thereto. A "*prima facie*" case of the crime/fraud scheme alleged in the Complaints has been shown already by discovery in this case as evidenced by deposition testimony and exhibits already obtained in this case, and now of public record, including the depositions of State Farm's home office representative Stephan Hinkle [Exhibit D to Motion #169] and exhibits thereto. *See, also*, depositions of State Farm claims personnel including Catastrophe Adjuster Dave Haddock [taken in Memphis Tennessee on December 12, 2006; State Farm Team Manager Mark Drain [taken in Dallas Texas on November 3, 2006; Adjuster Joe Caruso [taken in Sugarland, Texas, on November 14, 2006 ], and Mississippi Claims Section Manager Terry Blalock, and exhibits thereto [Exhibit C, Motion #169].

American insurance-paying public which is significantly impacted by the practices at issue.<sup>2</sup>

4.

Randel's motion is not supported by the law. A blanket, or advance, refusal to answer questions on the basis of the Fifth Amendment in a deposition is improper. *United States v. Roundtree*, 420 F.2d 845, 852 (5<sup>th</sup> Cir. 1969) (superseded on unrelated grounds.) ["Even if the danger of self-incrimination is great, Roundtree's remedy is not to voice a blanket refusal to produce his records or to testify. Instead, he must present himself with his records for questioning, and as to each question and each record elect to raise or not to raise the defense . . . . [A] blanket refusal is unacceptable."] See, also, *United States v. Malnik*, 489 F.2d 682 (5<sup>th</sup> Cir. 1974). [A proper application . . . requires that specific questions be propounded . . . and the claim of the right against self-incrimination must be claimed in response to each. A "blanket" refusal to answer all questions is unacceptable.] To the same effect are decisions from throughout the circuits. See, e.g., *National Life Ins. Co. v. Hartford Acci. & Indem. Co.*, 615 F.2d 595, 598 (3<sup>rd</sup> Cir. 1980). [Witness in a civil proceeding may not invoke a blanket fifth amendment privilege prior to the propounding of questions.]; *In re Turner*, 309 F.2d 69, 71 (2d Cir. 1962) [Witness must obey the process of the authority summoning him to appear and claim the constitutional privilege as particular questions are asked.]

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<sup>2</sup>That this case addresses a matter in which the public has a significant interest is illustrated by the recent wave of public examination of the practices at issue here. See, for example, the January 6, 2007 SUN HERALD article by former Wall Street Journal staff writer, Dean Starkman, of the Insurance Transparency Project, founded by Hungarian financier and billionaire, George Soros. The issue on which the Insurance Transparency Project is founded is the need for "greater transparency" in the actions of the insurance industry. Starkman and the Project call the Katrina litigation in this Court "an insurance laboratory" regarding the significant issue of secrecy in the insurance industry. <http://insurancetransparencyproject.com>.

5.

This case is not a “related case” to *McFarland* or the other “Scruggs Group” cases so as to make this case fall under the UNOPPOSED order entered in *McFarland*. The plaintiff in this case is represented by different counsel than those in *McFarland* and the Scruggs cases. The objective in this case is different from that of the traditional “wind vs. water” cases such as *McFarland* and the hundreds of other individual cases filed by the Scruggs Group and others. That this is not a “related case” is made clear by yesterday’s announcement by the *McFarland* attorneys of a tentative “settlement” with State Farm – conditioned on the dropping of both civil and criminal charges against the insurer – and by the response of the Plaintiff here, Judy Guice, to said proposal. See, Exhibit A, article from January 9, 2007 SUN HERALD.

6.

The Plaintiff alleges here that State Farm and its parent company uniformly, and intentionally, applied an erroneous standard to the claims of all such policyholders whose homes were totally destroyed by a combination of wind and water – a standard adopted *post*-Katrina contrary to the provisions of the State Farm policy – to intentionally reduce the company’s payments on “slab claims” by (a) wrongfully shifting the costs of the losses to the National Flood Insurance Program and the policyholders, and (b) “gaming” the court system by shifting the insurance company’s claims-adjusting obligations to the judicial venue, thereby starving out policyholders and making recoveries in individual cases cost-prohibitive – even with the prospect of punitive damages in individual one-at-a-time trials of every case.<sup>3</sup>

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<sup>3</sup>For more on the claims and allegations of this case, and details on how the facts of the Guice claim reveal exactly such a practice by State Farm, see Exhibit B, excerpts from the January 3, 2007, second deposition of the Plaintiff, Judy Guice, taken by State Farm.

7.

That an individual non-party witness-deponent who allegedly participated in a fraudulent scheme *may* claim the Fifth Amendment in response to questions, or even that he *may* incur some prejudice as a result thereof – something neither the Court, the Plaintiff, nor the witness has any way of knowing prior to the questioning – is certainly not grounds for issuance of a blanket “sealing” of a deposition, concealing the deposition from the public which has a vested interest in the insurance practices at issue in this case.

WHEREFORE, the Plaintiff respectfully requests that the Motion for Protective Order [#186] filed by non-party deponent David S. Randel, should be denied.

Respectfully submitted, this the 10th day of January, 2007.

JUDY M. GUICE

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