

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**PETER AND SANDRA PERRIEN**  
**Plaintiffs**

**VERSUS**

**STATE FARM FIRE & CASUALTY  
COMPANY**  
**Defendant**

\* **CIVIL ACTION NO. : 06-8087**  
\*  
\* **SECTION: "K"**  
\*  
\* **JUDGE: STANWOOD R. DUVAL, JR.**  
\*  
\* **MAG.: 2**  
\*  
\* **MAG.: JOSEPH C. WILKINSON, JR.**  
\*

\* \* \* \* \*

**MOTION FOR DISCOVERY SANCTIONS**

NOW INTO COURT, through undersigned counsel, come plaintiffs, Peter and Sandra Perrien, who respectfully represent that defendant, State Farm Fire & Casualty Company, ("State Farm," is in violation of this Court's order to produce documents at the 30(b)(6) deposition on July 3, 2008. For reasons more fully outlined in the supporting memorandum attached hereto, movers pray that defendant, State Farm , be sanctioned, ordered to produce withheld documents, pay all costs of the deposition and attorneys' fees.

Respectfully submitted,

/s/ Paul C. Miniclier  
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Law Office of Paul C. Miniclier  
1305 Dublin Street  
New Orleans, LA 70118  
Telephone: (504) 864-1276  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record via the electronic filing system, this 11<sup>th</sup> day of July, 2008.

/s/ Paul C. Miniclier

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**PETER AND SANDRA PERRIEN**  
**Plaintiffs**

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\* \* \* \* \*

**MEMORANDUM IN SUPPORT MOTION FOR DISCOVERY SANCTIONS**

**MAY IT PLEASE THE COURT:**

State Farm Fire & Casualty Company ("State Farm") has violated this Court's order regarding discovery and, as such, should be sanctioned, as well as compelled to comply with the Court's order. These violations included 1) failure to provide complete files (flood and wind), 2) redaction of files (identities and extent of files) and 3) refusal to produce documents, as well as producing a competent witness on the requested topics.

**FACTS**

State Farm filed a Motion for Protective Order (Doc 37) to limit plaintiffs' notice of 30(b)(6) to produce a corporate witness and documents. On June 19, 2008, this Court signed an order specifically stating what State Farm was to produce at the deposition which was to be completed no later than July 3, 2008 (Doc 68).

The 30(b)(6) deposition was held on July 3, 2008. One of the items specified in the Court's order was that defendant "must produce a witness and all non-privileged materials concerning any claim of tornado, funnel cloud or high wind damage to other properties within a ½ mile radius of plaintiffs' property arising from Hurricane Katrina." Defendant produced partial and redacted files of claims. With the exception of four items identified in the ordered privilege log ( Rec. Doc. 90), none of the redacted portions of the files were listed in the privilege log. The Court's order did not permit redaction of any part of the files that was not privileged. Nor did the Court's order allow State Farm to determine what portions of the claims files were to be produced.

In further violation of the Court's order, the defendant severely redacted the materials furnished at the deposition to only those documents that referred to "high wind" and, on its own accord, did not present "all non-privileged materials" as previously described. (See Exhibit "1" - excerpt of Chris Lapinskie deposition). For example, the Homeowners/Wind claim file, only included photos, part of the adjuster's reports and very limited portions of the activity logs, nothing else. No payment records, no document history logs, no correspondence etc. Additionally, State Farm redacted the names of the insureds for these claims. None of this redaction was allowed by the Court's order. State Farm's "interpretation" of the Court's order is a classic example of their arrogance of power. Even with a Court order, they determine what they will produce. The solution is simple - produce all claims files and/or related documents, wind and flood, for the claims within ½ mile of the plaintiffs' property.

Another example of State Farm's arrogance is the flood "files" they produced were simply photos and cover sheet, nothing else. Although the documents were present and readily available, defendant refused to produce. The "flood files" are the self designated files by State Farm which

contain information directly related to the claims. In the Perrien claim, their flood file contained many references to evidence which pertains to their claim, including the wind claim. Moreover, plaintiffs contend that State Farm dumped valid wind related damages into the flood claim, all of which makes the discovery of these files relevant and designed to lead to admissible evidence.

Defendant was also ordered to produce “a witness competent to testify about its document retention policy....” Mr. Lapinskie did not know State Farm’s retention policy. He also could not explain why a report produced by an adjuster was not retained in the file only to say that it was a “work in progress” and unnecessary to be retained in the file. Mr. Lapinskie was also totally unaware of how to retrieve electronically stored data. He was only able to produce printed documents which leads counsel for plaintiffs to believe that there are other requested materials which were not produced.

Finally, State Farm identified a number of documents which were ordered by the Court but refused to produce them unless Plaintiffs’ counsel signed an additional confidentiality order. The basis for this additional requirement - the documents were “proprietary”. State Farm’s motion for protective order did not seek any protection for any documents because they were proprietary and, as such, that basis has been waived. Additional and more importantly, they have been ordered to produce these documents without restriction and State Farm cannot now unilaterally decide to impose additional conditions.

Defendant’s flagrant violation of the Court’s order should be sanctioned. Defendant should be required to produce all documents withheld, pay all costs of the deposition and attorneys fees. **Owing to State Farm’s refusal to follow this Court’s order, plaintiffs request a simple order from the Court - “produce all documents and material for all of the claims within ½ mile of**

**plaintiffs' property, including but not limited to the entire unredacted wind and flood claims files".**

WHEREFORE, plaintiffs pray that defendant, State Farm, be sanctioned for violation of this Court's order; that defendant be ordered to produce all documents withheld, pay all costs of the deposition and attorneys' fees.

Respectfully submitted,

/s/ Paul C. Miniclier  
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I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record via the electronic filing system, this 11<sup>th</sup> day of July, 2008.

/s/ Paul C. Miniclier

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**PETER AND SANDRA PERRIN** \* **CIVIL ACTION NO. 06-8087**  
\*  
**VERSUS** \* **SECTION: "K"**  
\*  
**STATE FARM FIRE & CASUALTY CO.** \* **MAGISTRATE (2)**  
\*  
\* \* \* \* \*

**NOTICE OF HEARING**

**NOW INTO COURT**, through undersigned counsel, comes plaintiffs, Peter and Sandra Perrien, who hereby provide notice that this matter will be brought on for hearing on the 6<sup>th</sup> day of August, 2008, at 11:00 AM before the Honorable Joseph C. Wilkinson, Jr.

Respectfully submitted this 11<sup>th</sup> day of July, 2008.

BY: /S/ Paul C. Miniclier  
Paul C. Miniclier, T.A. (#17062)  
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New Orleans, Louisiana 70118  
(504) 864-1276  
pcm@minilaw.net  
Attorneys for plaintiffs, Peter and Sandra Perrien

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record this 11<sup>th</sup> day of July, 2008, through electronic service via the Eastern District of Louisiana's electronic filing system.

/S/ Paul C. Minielier



1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF LOUISIANA

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4  
5  
6 PETER AND SANDRA PERRIEN CIVIL ACTION  
7 NO. 06-8087

8 VERSUS

9 STATE FARM FIRE & SECTION  
10 CASUALTY COMPANY MAG. 2

COPY

11  
12 Revised 30(b)(6) Deposition for  
13 Records Deposition of CHRIS LAPINSKIE, 6501  
14 Winding Ridge Court, Lincoln, Nebraska 68512,  
15 taken in the offices of Blue Williams, LLP,  
16 3421 N. Causeway Boulevard, Suite 900,  
17 Metairie, Louisiana, 70002, commencing at  
18 10:30 a.m. on Thursday, the 3rd day of July,  
19 2008.

20 APPEARANCES:

21 THE LAW OFFICE OF PAUL C. MINICLIER  
22 (BY: PAUL C. MINICLIER, ESQUIRE)  
23 (BY: SANDREA EVERETT, ESQUIRE)  
24 1305 Dublin Street  
25 New Orleans, Louisiana 70018  
(Attorneys for the Plaintiffs, Peter and  
Sandra Perrien)

1           Sure.

2 BY MR. MINICLIER:

3           Q     Have any documents been redacted  
4 from these claim files?

5           A     What's included in those claim  
6 files were all references to wind, hurricane,  
7 tornado.

8           Q     So, in other words, you have not  
9 produced anything in relation to the flood  
10 files for any of these claims?

11          A     In my review of these files if  
12 there was mention of wind in that flood file,  
13 it was included as part of this.

14          Q     I'm going to go and mark as 9-A the  
15 first document that is produced which relates  
16 to 354 Moonraker. And I take it that these  
17 have been produced by address; is that right?

18          A     We've included the address on those  
19 productions, that's correct.

20          Q     And the stapled, as they are  
21 organized, is what you're presenting as the  
22 claim file for this individual address; is  
23 that right?

24          A     The reference in that claim file is  
25 to wind, including photos.

1 Q Let me show you 9-A (hands  
2 document). Page 1 is considered to be what  
3 page? what is this called, sir?

4 A This is the front page of the fire  
5 claim service record.

6 Q And the rest of the documents  
7 produced, what are those?

8 A Photos as contained in that claim  
9 file.

10 Q And that's the only thing being  
11 produced is the photographs and the cover  
12 page?

13 A That is correct.

14 Q And why is the rest of the claim  
15 file related to the wind not being produced?

16 A When I reviewed these files,  
17 anything related to wind I produced.

18 Q Was a wind claim made on this file?

19 A I'm not sure if this is a wind  
20 claim or a flood claim.

21 Q Well, don't you designate it as  
22 flood versus wind?

23 A No. It's a homeowner's file or a  
24 flood file.

25 Q And what kind of file is this?

1           A       All I have is a claim number, sir.  
2 I don't know whether it's a homeowner's or a  
3 flood.

4           Q       So as we're sitting here today, you  
5 can't testify on 9-A as to whether or not the  
6 documents produced or either produced as part  
7 of the wind file or the flood file; is that  
8 right?

9           A       I'm not familiar with your term  
10 "wind file." I have a homeowner's file and I  
11 have a flood file.

12          Q       Homeowner's and flood?

13          A       What I've produced is all documents  
14 from this file that referenced wind.

15          Q       So you're saying that if there  
16 is -- your interpretation of the court order  
17 is if it says wind, you're going to produce  
18 it; and if it doesn't say wind, you're not  
19 going to produce it?

20          A       That's correct.

21          Q       So you didn't produce the  
22 adjuster's report for 9-A?

23          A       The adjuster's report had no  
24 reference to wind. So if I was to speculate,  
25 I'd speculate that this is actually a flood

1 file.

2 Q But you're speculating?

3 A I don't know that this is a flood  
4 claim or a wind claim.

5 Q So you can't testify one way or the  
6 other in regards to what other information is  
7 wind-related or flood-related; is that right?

8 A I provided all the information in  
9 this file that references wind including the  
10 photos.

11 Q Did you do the redaction or did  
12 someone else do the redaction?

13 A I was here assisting in the  
14 selection of the files, in the review of the  
15 files, and with the redactions.

16 Q And when was that done?

17 A That was last week.

18 Q And who assisted you in the  
19 redaction of those files?

20 A It was done with counsel.

21 Q Which counsel?

22 A John Henry.

23 Q Any other counsel present?

24 A I do not believe that there was  
25 anybody else present during the redaction,

1 no.

2 Q And as we sit here today for 9-A,  
3 which is 354 Moonraker, you can't tell me  
4 whether or not there's also a wind file, a  
5 homeowner's file, or a flood file? You're  
6 just speculating based on, what, the type of  
7 photographs there are that this is a flood  
8 file?

9 A I've produced the documents that  
10 reference wind. The reason I've included  
11 this was to show that it's part of a claim  
12 file. I'm sorry. Now, that I recall, I  
13 included these photos because there's photos  
14 of wind damage and I thought that that was in  
15 compliance with the court order. And when I  
16 found that there was wind damage, I decided,  
17 with the consultation with counsel, that we  
18 would include all photos. So, for example,  
19 this page that's labeled 30 shows wind damage  
20 to a roof, because I see wind damage to a  
21 roof, we decided to include all photos.  
22 That's the only reference to wind in this  
23 entire file. The copy of the claim service  
24 record was included to show that it's the  
25 actual claim number.