

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

**KATHLEEN SCHAFER, ET AL**

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

**CIVIL ACTION NO. 06-8262**

**Versus**

**SECTION: "K" (5)**

**JUDGE DUVAL**

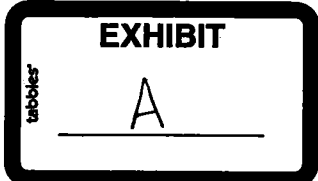
**STATE FARM FIRE & CASUALTY, ET AL**

**MAGISTRATE JUDGE CHASEZ**

\* \* \* \* \*

**REQUEST FOR ELECTRONIC EVIDENCE  
REQUEST FOR PRODUCTION OF DOCUMENTS  
and INTERROGATORIES**

To: **State Farm Fire & Casualty Company**  
Through Counsel of Record:  
WAYNE J. LEE, ESQ.  
MICHAEL Q. WALSH, JR., ESQ.  
STONE PIGMAN  
546 Carondelet Street  
New Orleans, Louisiana 70130  
E-Mail: [wlee@stonepigman.com](mailto:wlee@stonepigman.com)  
E-Mail: [mwalshe@stonepigman.com](mailto:mwalshe@stonepigman.com)



### Definitions and Instructions

- A. Document** - As used herein, the term “document” shall be construed broadly and expansively to include any medium upon which information is recorded, including, but not limited to, contracts, agreements, applications, forms, policies, claims, files, records, letters, correspondence, minutes, logs, memoranda, notes, ELECTRONIC EVIDENCE (as defined herein), photocopies, facsimiles, transcripts, pleadings, claims, sketches, drawings, designs, blueprints, graphs, photographs, videotapes, audiotapes, microfilm, charts, studies, tables, calculations, analyses, summaries, proofs of loss (POLs), repair estimates, construction estimates, invoices, pricing data, other data, compilations, advertisements, fliers, mailings, brochures, notices, acknowledgments, and any draft of the foregoing, which is, or has been, at any time, in the control, custody or possession of STATE FARM.
- B. Electronic Evidence** - As used herein, the term “Electronic Evidence” shall be construed broadly and expansively to include any electronic medium upon which information is recorded, including, but not limited to, computer tapes, computer disks, computer cards, computer files, computer systems, computer databases, e-mails, floppy discs, zip discs, backup tapes, mainframes, hard drives, computer presentations, PowerPoint slides, calendars, directories, diaries, application programs, data files and file fragments, word processing files and file fragments.
- C. Communication** - Shall refer to all communication, whether written or oral or by electronic means, including, but not limited to, telephone conversations, letters, memoranda, e-mails, facsimiles, reports, interviews, statements, contracts, agreements and consultations. Whenever a request refers to conversations with others, such request also refers to communications with all persons acting on behalf of that other, including, but not limited to, employees, officers, managers, directors, parent corporations, subsidiaries, associates, consultants, investigators, secretaries, assistants, agents, brokers, claims adjusters, or attorneys.
- D. You or Your or State Farm** - Shall refer to State Farm Fire & Casualty Company, and/or all related entities, such as parent corporations, sister corporations, predecessors-in-interest, successors-in-interest, affiliates, and/or subsidiaries, and to any and all parties or persons acting on behalf of one or more of these entities, including, but not limited to, employees, officers, managers, directors, associates, consultants, investigators, secretaries, assistants, agents, brokers, claims adjusters, examiners, estimators, contractors, experts, engineers, economists, pricing specialists and/or attorneys.

- E. Your Agent or State Farm Agent** - shall be defined as any party, including, but not limited to, an independent adjusting, architectural, accounting, engineering, software, repair, restoration, contracting and/or construction, pricing, and/or consulting company or firm, which has or had a contract with STATE FARM to provide any service relating to the claims adjusting and/or claims review and/or claims payment process, (in particular pricing determination and/or PRICING INFORMATION) to, for, or on behalf of STATE FARM and/or another STATE FARM AGENT.
- F. Xactware** - shall be defined to include Xactware Solutions, Inc., and any affiliates, subsidiaries, predecessors-in-interest, and/or successors-in-interest of Xactware Solutions, Inc., (including, but not limited to, Xactnet, Xactware, Xactimate and/or ISO), and to any and all parties or persons acting on behalf of one or more of these entities, including, but not limited to, employees, officers, managers, directors, associates, consultants, investigators, secretaries, assistants, agents, brokers, claims adjusters, examiners, estimators, contractors, experts, engineers, economists, pricing specialists and/or attorneys.
- G. Pricing Information** - shall be defined as any DOCUMENT and/or ELECTRONIC EVIDENCE and/or COMMUNICATION obtained, collected, compiled, created, modified, purchased, sold, and/or used by STATE FARM, relating or in any way pertaining to the price and/or cost and/or estimated price and/or cost of any repair, restoration, replacement and/or construction of any movable or immovable property, including, but not limited to, material, labor, tax, overhead and profit, minimum price, base service charge and/or other element(s) of a price and/or cost.
- H. Plaintiffs or Proposed Classmembers or Proposed Class** - shall be defined as all Louisiana residents who were named insureds with STATE FARM and who received a one-time unconditional payment for the actual cash or other value of damage to property located in the State of Louisiana, under the terms of homeowner's policies with State Farm, utilizing any XACTWARE or Xactimate pricing, from August 29, 2005 thru the present.
- I. Privilege** - If a privilege is claimed over any document, (as defined above), please provide: (a) the identity of the author of the document, (b) the identity of all recipient(s) of the document, (c) the date that the document was prepared, (d) a brief description of the document, and (e) the basis upon which the privilege is claimed, including the statute, rule or decision upon which the claim of privilege is based.
- J.** The terms “and” and “or” and “and/or” shall be construed broadly and expansively as “and/or”, and shall not be construed to limit the documents or information sought in any manner.

- K.** The term “**relate**” (including “relating”, “related” and/or “relates”) shall be construed broadly and expansively to mean consisting of, referring to, reflecting, or in any way referring to, reflecting, or being in any way legally, logically, or factually connected with the matters discussed.

### **REQUESTS FOR ELECTRONIC EVIDENCE**

Subject to State Farm’s objections and/or evidence of any contention that some or all of the electronic data requested is “not reasonably accessible” and/or that the production of some or all of the electronic data requested – in its native electronic form – is “unduly burdensome”, and attempts to resolve any of those issues (if any) through the meet and confer process, Plaintiffs, pursuant to Federal Rule of Civil Procedure 34(b)(2)(E), request the following electronic data as it is ordinarily maintained, in its native electronic form:

#### **REQUEST FOR ELECTRONIC EVIDENCE NO. 1:**

Any and all Pricing Information relating or in any way pertaining to the costs, estimated costs, adjusted costs and/or prices of construction, restoration, replacement and/or repair goods and/or services within the State of Louisiana from June 1, 2005 thru December 31, 2007, including, but not limited to:

- i. Pricing Information provided by You to Xactware;
- ii. Pricing Information obtained by You from Xactware;
- iii. Pricing Information generated by, collected by and/or collected from State Farm and/or any State Farm Agent;
- iv. Pricing Information submitted to State Farm by any Louisiana policyholder and/or insured, (and/or a contractor, expert, adjuster, attorney and/or consultant contracted, retained or otherwise employed by the policyholder or insured); and/or

- v. Pricing Information used by State Farm in support of payments or tenders to the Proposed Class.

**REQUEST FOR ELECTRONIC EVIDENCE NO. 2:**

Please provide all e-mails sent or received by Mark A. Richter between August 1, 2005 and December 31, 2007.

**REQUEST FOR ELECTRONIC EVIDENCE NO. 3:**

Please provide all e-mails sent or received by Garrett P. Gaubert between August 1, 2005 and December 31, 2007.

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, please produce the following Documents (and/or Electronic Evidence) either as they are ordinarily maintained or in a reasonably usable format, within legal delays:

**REQUEST NO. 1:**

Any and all contracts or agreements between You and Xactware.

**REQUEST NO. 2:**

Any and all State Farm manual(s) or related guidelines, (including, in particular, but not limited to, OG 783-100 and OG 75-04), for using any estimating software (including, in particular, but not limited to Xactimate or other Xactware Pricing Information).

**REQUEST NO. 3:**

Any and all State Farm manual(s) or related guidelines, (including, in particular, but not limited to, OG 75-06 Documentation of Personal Property Loss, and OG 75-07 File Requirements – First Party Claims, OG 75-01, OG 75-160, OG 741-200, OG 755-100, OG 75-102 Loss of Use Coverage, and OG 787-100), used by State Farm and/or State Farm Agents in documenting,

supporting, adjusting or estimating any loss, scope and/or value of any Proposed Classmember's claims.

**REQUEST NO. 4:**

Any and all State Farm Depreciation Guidelines (including, in particular, but not limited to OG 75-50), used by State Farm and/or State Farm Agents in documenting, supporting, adjusting or estimating any loss, scope and/or value of any Proposed Classmember's claims.

**REQUEST NO. 5:**

Any and all update document(s), including but not limited to, correspondence, documentation, informational brochures, and/or readme text for using any estimating software (including, in particular, but not limited to, Xactimate, XactTotal, XactValue and Square Foot Calculator), used by State Farm and/or State Farm Agents in documenting, supporting, adjusting or estimating any loss, scope and/or value of any Proposed Classmember's claims.

**REQUEST NO. 6:**

\_\_\_\_\_ Any and all Documents (and/or Electronic Evidence) relating or in any way pertaining to Claim Number 18-R326-756.

**REQUEST NO. 7**

The entire claim file for Claim Number 18-R326-756, including, but not limited to, the activity log, and any and all drafts, estimates, measurements, diagrams, photos, and communications.

**REQUEST NO. 8**

Any and all homeowners policy forms, including any and all amendments and endorsements thereto, issued to Proposed Classmembers, in effect from 2005 thru the present.

**REQUEST NO. 9**

Any and all State Farm operating and/or adjusting guidelines (OGs) in effect from January 1, 2005 thru December 31, 2007, including any addendums and/or changes.

**REQUEST NO. 10**

Any and all reports, directives, guidelines and/or bulletins relating or in any way pertaining to Hurricane Katrina, Hurricane Rita, Hurricane Gustav and/or Hurricane Ike, which in any way relate or pertain to claims handling and/or estimating procedures, issued to and/or exchanged between or among State Farm employees, officers, and/or directors, and/or State Farm Agents.

**REQUEST NO. 11**

Any and all Documents related to any incentive programs, standards or quotas which can provide a benefit or bonus of any pecuniary value to State Farm Agents and/or other claims handling personnel in effect from August 1, 2005 thru December 31, 2007.

**REQUEST NO. 12**

All Documents used by State Farm relating to the methodology State Farm employs to confirm the accuracy of Xactimate or other Xactware Pricing Information from August 1, 2005 thru the present.

**REQUEST NO. 13**

The guidelines or other Documents which relate to the process or methodology by which State Farm and/or State Farm Agents provide feedback or other Pricing Information to Xactware.

**REQUEST NO. 14**

The guidelines or other Documents which describe how settled claims data would be submitted to Xactware by State Farm.

**REQUEST NO. 15**

The biography, resume, and/or *curriculum vitae* of any State Farm Agent, employee, expert or other witness who may be called upon by State Farm to submit an affidavit and/or testify at the hearing on class certification.

**REQUEST NO. 16**

All sworn or unsworn statements, affidavits, testimony, or declarations of any State Farm Agent, employee, expert or other witness who may be called upon by State Farm to submit an

affidavit and/or testify at the hearing on class certification, (including any and all depositions, trial testimony, affidavits, declarations, and/or testimony before any governmental, legislative, regulatory or investigative body or agency, in either an individual or representative capacity).

**REQUEST NO. 17**

All publications authored or co-authored by any State Farm Agent, employee, expert or other witness who may be called upon by State Farm to submit an affidavit and/or testify at the hearing on class certification

**REQUEST NO. 18**

Any and all Documents which You intend to submit in opposition to class certification.

**INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, please answer the following

Interrogatories, within legal delays:

**INTERROGATORY NO. 1**

Please identify each and all Proposed Classmembers by: **(i)** name; **(ii)** insured or covered properties / addresses; **(iii)** State Farm policy number(s); and **(iv)** State Farm claim number(s).

**INTERROGATORY NO. 2**

If you contend that some or all of the Electronic Evidence requested herein is “not reasonably accessible” and/or that the production of some or all of the Electronic Evidence requested – in its native electronic form – is “unduly burdensome”, please: **(i)** state all facts and/or other bases for such contention; and **(ii)** identify by name, title and business address the State Farm Agent whom You contend has personal knowledge regarding the alleged “inaccessibility” of the data and/or “undue burden” to State Farm.



**INTERROGATORY NO. 3**

Please list all Xactware or Xactimate price lists covering any region or part of Louisiana issued to State Farm between June 1, 2005 and the present. Please indicate the pricelist designation and the date of issue.

**INTERROGATORY NO. 4**

Please describe with particularity the meaning of all numerals and letters in a State Farm price list designation (e.g. LANO2F6C2).

**INTERROGATORY NO. 5**

Please identify by name, employer, title and business address, any State Farm Agent, employee, expert or other witness who may be called upon by State Farm to submit an affidavit and/or testify at the hearing on class certification, and a brief summary or description of what he or she is expected to establish or address.

This 4<sup>th</sup> day of November, 2008.

Respectfully Submitted,

/s/ Stephen J. Herman

**STEPHEN J. HERMAN**, La. Bar No. 23129  
**SOREN E. GISLESON**, La. Bar No. 26302  
**HERMAN, HERMAN, KATZ & COTLAR, LLP**  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113  
Telephone: (504) 581-4892  
Fax No. (504) 561-6024  
E-Mail: [sherman@hhkc.com](mailto:sherman@hhkc.com)

**T. CAREY WICKER, III**, La. Bar No. 13450  
**J. ALEX WATKINS**, La. Bar No. 29472

**CAPITELLI & WICKER**  
1100 Poydras Street  
2950 Energy Centre  
New Orleans, Louisiana 70163-2950  
Telephone: (504) 582-2425  
Fax No. (504) 582-2422  
E-Mail: [JAW@Capitelliandwicker.com](mailto:JAW@Capitelliandwicker.com)

**MARK P. GLAGO**  
**The Glago Law Firm, LLC**  
365 Canal Street, Suite 1700  
New Orleans, Louisiana 70130  
Telephone: (504) 599-8666  
Fax No. (504) 599-8699  
E-Mail: [mglago@glagolawfirm.com](mailto:mglago@glagolawfirm.com)

**COUNSEL FOR PLAINTIFFS.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the above and foregoing Discovery Requests have been served, *via*  
E-MAIL, upon Defense Counsel, this 4th day of November, 2008.

/s/ Stephen J. Herman