

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

D. NEIL HARRIS AND ASSOCIATES, P.A. and
D. NEIL HARRIS, SR., Individually, and d/b/a
D. NEIL HARRIS AND ASSOCIATES, P.A.

PLAINTIFFS

VS.

CAUSE NUMBER: 1:08CV1489-HSO-MTP

STATE FARM FIRE AND CASUALTY COMPANY;
and JOHN and JANE DOES A, B, C, D, E, F, G, AND H

DEFENDANTS

MOTION FOR PROTECTIVE ORDER

COMES NOW, the Defendant, State Farm Fire & Casualty Company (hereinafter “State Farm”) and files this Motion for Protective Order, and would state unto the Court as follows:

I. INTRODUCTION

State Farm respectfully requests that the Court grant a protective order as to its production of certain proprietary, confidential and trade secret documents requested by the Plaintiffs in the instant case. State Farm seeks to produce the documents requested pursuant to a protective order providing that the documents not be disclosed outside this litigation except to the following persons:

1. The parties and counsel of record for the parties in this litigation, including all associates, paralegals, and stenographic and clerical employees of the respective parties to this case;
2. Any outside witness, consultant, adviser or expert retained, deposed or consulted by a party for the purpose of obtaining such individual’s advice or opinion regarding issues in this litigation, but only to the extent necessary for the individual to provide such advice or opinion and provided the individual has executed an appropriate agreement to maintain confidentiality in the form; and
3. The Court, including any Judge, Magistrate, or Judicial Law Clerk who is assigned to the case.

A proposed Consent Protective Order is attached hereto as Exhibit “A”. Certification of

consultation with Plaintiffs' counsel as to this motion is attached hereto as Exhibit "B".

II. PRIVILEGE LOG

State Farm seeks to obtain a protective order as to the following documents, as they may pertain to this matter:

DOCUMENT	DESCRIPTION	PRIVILEGE
BUILDING CONSTRUCTION TRAINING CD, 3CLM1654	SPECIFIC ISSUES RELATED TO ADJUSTER TRAINING	TRADE SECRET
CATASTROPHE CERTIFICATION WIND/HAIL STUDY GUIDE	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF WIND CLAIMS	TRADE SECRET
CATASTROPHE CERTIFICATION FLOOD STUDY GUIDES	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET
CATASTROPHE FLOOD STUDY GUIDES	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET
CATASTROPHE WIND/HAIL STUDY GUIDES	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF WIND CLAIMS	TRADE SECRET
CD; 2005 FLOOD CLAIM REVIEW AND UPDATE; SFNET	SPECIFIC ISSUES RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET
COUNTERTOP AND CABINET CALCULATIONS CD, 3CLM9119, 6-10-2005	SPECIFIC ISSUES RELATED TO HANDLING OF CLAIMS	TRADE SECRET
ESTIMATE REVIEW, COMPARISON AND RECONCILIATION TRAINING, INSTRUCTOR MANUAL, 07-08-2003	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET
ESTIMATE REVIEW, COMPARISON & RECONCILIATION TRAINING, PARTICIPANT MANUAL, 07-08-2003	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET
ESTIMATE REVIEW, COMPARISON AND RECONCILIATION TRAINING, PARTICIPANT MANUAL, 01-2004	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET

ESTIMATE REVIEW, COMPARISON AND RECONCILIATION TRAINING, INSTRUCTOR MANUAL, 01-2004	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET
ESTIMATING II, FACILITATOR'S MANUAL, 04-2006	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET
ESTIMATING II, STUDENT'S MANUAL, 04-2006	SPECIFIC ISSUES RELATED TO PROPERTY AND CASUALTY UNDERWRITING	TRADE SECRET
FIRE CLAIM ESTIMATING COURSE, PARTICIPANT MANUAL, 07/2005	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE CLAIM ESTIMATING COURSE, INSTRUCTOR MANUAL, 07/2005	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE CLAIM ESTIMATING COURSE, PARTICIPANT MANUAL, 02-2006	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE CLAIM ESTIMATING COURSE, INSTRUCTOR MANUAL, 02-2006	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE INDEPENDENT ADJUSTERS CERTIFICATION IDL BROADCAST AND SUPPORTING DOCUMENTATION; 09-14-2005	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE INDEPENDENT ADJUSTERS CERTIFICATION TEST	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE INDEPENDENT ADJUSTERS IDL SCRIPT, 10-29-2003	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE INDEPENDENT ADJUSTERS IDL BROADCAST SCRIPT VIDEO ROLL-INS, 10-2003	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FIRE PROFICIENCY IDL, INDEPENDENT ADJUSTERS - ESTIMATICS	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FIRE CLAIMS	TRADE SECRET
FLOOD CLAIM COURSE, 3CLM5005, 2001	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET

FLOOD POLICY TRAINING, 02-10-1999	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET
STANDARD FLOOD INSURANCE POLICIES TRAINING CD, 3CLM9082; 07-31-2003	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF FLOOD CLAIMS	TRADE SECRET
WEB-BASED TRAINING, CLAIMS BASICS CD, 3LD3343; 01-22-2007	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING, CONTRACT AND INSURANCE BASICS CD, 3LD3344; 01-22-2007	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING, STATE FARM AND INSURANCE HISTORY CD, 3LD3345; 01-22-2007	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING; FIRST PARTY CLAIM HANDLING SKILLS CD, 07-01-2004	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING; FIRST PARTY CLAIM HANDLING SKILLS CD, 05-10-2006	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING; HOMEOWNERS POLICY SECTION I CD, 07-01-2004	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING; HOMEOWNERS POLICY SECTION I CD, 05-10-2006	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WEB-BASED TRAINING; INTRODUCTION TO INSURANCE CD, 08-31-2001	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF INSURANCE CLAIMS	TRADE SECRET
WIND/HAIL STUDY GUIDE, ON SFNET	SPECIFIC ISSUES RELATED TO HANDLING OF WIND/HAIL CLAIMS	TRADE SECRET
2005 HURRICANE KATRINA ADJUSTER TRAINING	SPECIFIC ISSUES RELATED TO HURRICANE KATRINA ADJUSTER TRAINING	TRADE SECRET
2005 HURRICANE KATRINA ADJUSTER TRAINING; INDUCTION CENTER FLOOD TRAINING POWERPOINT	SPECIFIC ISSUES RELATED TO HURRICANE KATRINA ADJUSTER TRAINING	TRADE SECRET

2005 HURRICANE KATRINA ADJUSTOR TRAINING - LOUISIANA; CENTRAL CONSULTING SERVICES	SPECIFIC ISSUES RELATED TO HURRICANE KATRINA ADJUSTER TRAINING	TRADE SECRET
ALABAMA AND MISSISSIPPI CAT PL ESTIMATING GUIDELINES - 2005 HURRICANE	SPECIFIC ISSUES RELATED TO HURRICANE KATRINA ADJUSTER TRAINING	TRADE SECRET
QUICK RESPONSE TEAM GENERAL CALL FLOW	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF HURRICANE KATRINA CLAIMS	TRADE SECRET
QUICK RESPONSE TEAM INSTRUCTIONS FOR CLAIM REPRESENTATIVES	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF HURRICANE KATRINA CLAIMS	TRADE SECRET
REQUEST FOR RESPONSIVE DOCUMENTS 8/2006; HURRICANE SWEEP	SPECIFIC INSTRUCTIONS/TRAINING RELATED TO HANDLING OF HURRICANE KATRINA CLAIMS	TRADE SECRET
DAVE RANDEL'S DESK FILE PERTAINING TO RESEARCH COMPILED TO MANAGE HURRICANE CATASTROPHE	SPECIFIC ISSUES RELATED TO HANDLING OF HURRICANE CLAIMS	TRADE SECRET
TERRY BLALOCK'S DESK FILE PERTAINING TO RESEARCH COMPILED TO MANAGE HURRICANE CATASTROPHE	SPECIFIC ISSUES RELATED TO HANDLING OF HURRICANE CLAIMS	TRADE SECRET
DEPRECIATION GUIDE, PRINTED 01/12/2006	SPECIFIC MATERIALS RELATED TO ADJUSTER TRAINING	TRADE SECRET
LANSING VARGO'S WORKING FILE RELATING TO HURRICANE KATRINA	SPECIFIC ISSUES RELATED TO HANDLING OF HURRICANE CLAIMS	TRADE SECRET
OPERATION GUIDE 70-21	SPECIFIC CLAIM ADJUSTMENT ISSUES RELATED TO HURRICANE KATRINA	TRADE SECRET

III. STANDARDS

Fed. R. Civ. P. 26 (c) permits the Court, for good cause shown, to make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense, including:

- (7) that a trade secret or other confidential research,

development, or commercial information not be revealed or be revealed only in a designated way[.]

Courts have held that the purpose of this rule is to facilitate discovery: "If [parties] suspect that their trade secrets may fall into the wrong hands, parties may be uncooperative with respect to discovery requests. Assuring the safety of these sensitive disclosures often has the effect of encouraging the apprehensive litigants to fully cooperate with the discovery process." *Andrew Corporation v. Rossi*, 180 F.R.D. 338, 340 (N.D. Ill. 1998), citing *In re Krynicky*, 983 F.2d 74, 75 (7th Cir.1992).

The Mississippi Uniform Trade Secrets Act defines a "trade secret" as:

- (d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique or process, that:
 - (i) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
 - (ii) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Miss. Code Ann. § 75-26-3(d).

It is well settled that trade secrets are a form of property which is protected by the Fifth Amendment to the United States Constitution. *See Carpenter v. United States*, 484 U.S. 19, 26, 108 S.Ct 316, 98 L.Ed. 2d 275 (1987). Thus, public knowledge of trade secrets through forced disclosure would constitute an uncompensated taking.

Courts have consistently held that an insurance company's claim manuals and training materials (including State Farm's claim manuals and training materials) constitute a trade secret or confidential information within Fed. R. Civ. P. 26(c)(7). *See Republic Services, Inc. v. Liberty Mutual Ins. Co.*, 2006 WL 1635655 (E.D. Ky.); *Hamilton v. State Farm Mut. Auto. Ins. Co.*, 204 F.R.D. 420 (S.D. Ind. 2001). In *Hamilton*, the court held in regard to State Farm claim materials:

State Farm present[ed] sufficient evidence that its claims handling materials constitute trade secrets.

* * *

State Farm [made] a sufficient showing of good cause for the Court to enter a protective order by demonstrating a clear danger if its trade secrets are discovered by its competitors

* * *

The Court holds the documents in question fall within the meaning of Rule 26(c)(7), and that the potential dangers State Farm faces if a competitor gains access to its trade secrets and confidential information outweigh any legitimate interest one may possess in obtaining these documents. As a result, the Court finds that State Farm set forth good cause for the entry of a protective order.

Hamilton, 204 F.R.D. at 423-25.

IV. DISCUSSION

State Farm seeks protection as to its claim manuals and training materials regarding adjustment of claims in general and hurricane claims in particular.

The documents in question are of independent economic value to State Farm in that it invested considerable time, effort and expense in creating these materials. These materials are unique creations of the company and are among its most valuable competitive assets. The competitive nature of the insurance business demands that core claims handling documents such as these be kept confidential. The discovery of the materials in question by a competitor would permit it to appropriate State Farm's trade secrets by duplicating or reconstructing its claims handling procedures without the experience, time and expense associated with State Farm's creation of such documents.

Furthermore, State Farm maintains stringent safeguards to prevent public dissemination of its claims handling materials, as seen by the fact that its policy requires that the documents are maintained in locked file cabinets and/or in areas not open to the public in locations protected by

locks and/or burglar alarms.

All of the above factors weigh heavily in favor of a finding that the documents in question constitute trade secrets and are subject to protection within the instant litigation according to the Consent Protective Order attached hereto as Exhibit “A”.

State Farm respectfully requests that the attached proposed Consent Protective Order, Exhibit “A,” be entered in this matter. State Farm’s proposed Consent Protective Order has been routinely entered by this Court. By way of example, on February 29, 2008, this Court entered this same Consent Protective Order in the following matters: *Larry Abney v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv710, *Dorothy Alford v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv814, *Dorothea Barker v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv816, *John and Elizabeth Bell, IV v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv716, *Emily Carr v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv826, *Edward and Wendy Cooley v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv726; on March 3, 2008, this Court entered this Consent Protective Order in the following matters: *Susan Austin v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv713, *Bonnie and Greg Beckman v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv715, *Kearney and Denise Breland v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv719, *Jason and Debbie Crawford v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv727, *Telina Birch v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv817, *Ernestine Bradley v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv821, *Martha Bryant v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv823, *Linnia Carr v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv827, *Ricky and Martha Broadus v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv721, *Thomas and Thelma Cobb v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv725, and *Larry Abney v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv711; on March 5, 2008, this Court entered this Consent Protective Order in *David and Alma*

Burton v. State Farm Fire & Casualty Co., Cause No. 1:07cv723; on March 26, 2008, this Court entered this Consent Protective Order in *Jean Brown v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv822, *Harry and Joanna Burke v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv722, *Martha Bryant v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv824 and *Francis and Patrick Arnona v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv712; on March 3, 2008, this Court entered this Consent Protective Order in the following matters: *Thomas and Susan Erhardt v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv734, *Cora Creighton v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv832, *Artie Doty v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv836, *Kim David v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv834, *Charles and Susan Freeman v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv738, *Royce and Anna Garrison v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv742 and *Richard and Merileight v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv740; on April 1, 2008, this Court entered this Consent Protective Order in the following matters: *Vernon and Lela Doster v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv731, *Marisa Dalla Valle v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv833, *Eva Mae Fairley v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv837, *Jess and Debbie Davis, III v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv729, *Ben and Kathy Foster v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv737, *Lewis and Elizabeth Elford v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv733, *Debra and Dennis Finn v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv735 and *Jerry and Linda Garner v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv741; on June 3, 2008, this Court entered this Consent Protective Order in the following matters: *Curtis Standfuss v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv793 and *David Lagasse v. State Farm Fire & Casualty Co.*, Cause No. 1:07cv761.

Despite the routine entry of this Consent Protective Order in a number of cases before this

Court, Plaintiffs' counsel refuses to enter into a Consent Protective Order with State Farm.

WHEREFORE PREMISES CONSIDERED, State Farm respectfully requests that the Court find that the documents identified above constitute trade secrets and enter the Consent Protective Order attached hereto as Exhibit "A."

RESPECTFULLY SUBMITTED,

STATE FARM FIRE AND CASUALTY
COMPANY

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BY: /s/ H. Scot Spragins
H. SCOT SPRAGINS, MSB # 7748

CERTIFICATE OF SERVICE

I, **H. SCOT SPRAGINS**, one of the attorneys for the Defendant, **STATE FARM FIRE & CASUALTY COMPANY**, do hereby certify that I have on this date electronically filed the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

DATED, this the 9th day of June, 2009.

/s/ H. Scot Spragins

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