

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

MARK MONTET and ATHENE MONTET

PLAINTIFFS

VS.

CAUSE NUMBER: 1:08CV498-LTS-RHW

STATE FARM FIRE & CASUALTY COMPANY

DEFENDANT

**REBUTTAL OF THE DEFENDANT, STATE FARM FIRE AND CASUALTY
COMPANY, TO THE PLAINTIFFS' RESPONSE TO THE [35] MOTION FOR
PROTECTIVE ORDER**

Comes now the defendant, State Farm Fire and Casualty Company, and rebuts the plaintiffs' response [36] to State Farm Fire's earlier-filed motion [31] for a protective order.

1. The plaintiffs have responded to State Farm Fire's motion for a protective order with the concern that the proposed protective order is a "blanket protective order."

2. Paragraph 4 of the proposed Consent Protective Order clearly states that "confidential information" may be so designated on the face of the document. State Farm Fire has produced untold numbers of pages of documents in Katrina litigation marked "confidential," and never had such designations challenged.

3. The proposed Consent Protective Order is a duplicate of hundreds of such orders entered in prior and current Katrina cases, both by consent and over objection. The response of the plaintiffs presents no new argument or information suggesting that in this particular case the proposed Consent Protective Order is in any way inappropriate.

4. Recently, in the case styled *O'Keefe, et al v. State Farm Fire and Casualty Co., et al*, and having Civil Action Number 1:08cv600-HSO-LRA, United States Magistrate Judge Anderson once again found that good cause exists for a protective order in Katrina litigation against State Farm. The finding of good cause was echoed in the protective order issued in *D. Neil Harris and*

Assoc., P.A., et al, v .State Farm Fire and Cas. Co., et al, Civil Action Number 1:08cv1489-HSO-MTP, as it has been in numerous Katrina cases in which State Farm Fire has been a defendant.

5. In any event, Judge Anderson also held that the protective order advanced by State Farm in *O'Keefe* was overly broad, and in her order dated July 2, 2009, directed the O'Keefes' counsel to submit plaintiffs' proposed protective order for entry.

6. In acknowledgment of the *O'Keefe* ruling, State Farm Fire attaches hereto as Exhibit C an amended proposed protective order. The order is essentially identical to that entered in *O'Keefe*, except that language has been added to Paragraphs 1 and 4. The additional language is intended to allow State Farm Fire to indicate the confidential nature of documents by labeling them as "Trade Secret Materials." Said changes will, in the event such materials are produced in the instant litigation, simply decrease the expense and increase the efficiency of producing said materials.

7. The amended proposed protective order attached hereto also addresses plaintiffs' concerns of a "blanket protective order," in that it more clearly delineates the procedure for marking protected documents as confidential.

8. Finally, the proposed protective order contains no directive that the documents listed in State Farm Fire's motion will not be produced. It instead allows the documents to be produced and available to the plaintiffs subject to the reasonable restrictions that protect State Farm Fire's proprietary interests as set forth in State Farm Fire's motion for the protective order. Accordingly, plaintiffs' cries that they will not have the documents available are nothing more than a red herring.

WHEREFORE, PREMISES CONSIDERED, the defendant, State Farm Fire and Casualty Company, requests the Court enter an appropriate protective order in the above-styled case.

Respectfully submitted, this the 7th day of August, 2009.

STATE FARM FIRE AND CASUALTY
COMPANY

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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, August 7, 2009

/s/ H. Scot Spragins

_____ **H. SCOT SPRAGINS**

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