

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

THOMAS C. and PAMELA A. McINTOSH,

PLAINTIFFS

vs.

CIVIL ACTION NO.: 1:06-CV-1080-LTS-RHW

STATE FARM FIRE & CASUALTY CO.  
And FORENSIC ANALYSIS &  
ENGINEERING CO, et. al.,

DEFENDANTS

**NOTICE OF INTENT TO SERVE SUBPOENA**

PLEASE TAKE NOTICE that in accordance with Rule 45 of the Federal Rules of Civil Procedure, Plaintiffs intend to serve a Subpoena Duces Tecum upon State Farm Bank. A copy of the Subpoena Duces Tecum is attached to this Notice as Exhibit "A".

Respectfully submitted, this the 27<sup>th</sup> day of August, 2007.

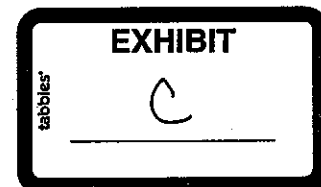
THOMAS C. and PAMELA MCINTOSH, PLAINTIFFS

BY: /s/ Derek A. Wyatt  
DEREK A. WYATT (MSB No. 7413)

Of Counsel:

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 27<sup>th</sup> day of August, 2007, I electronically filed the foregoing Notice of Intent to Serve Subpoena with the Clerk of the Court using the ECF Filing system which sent notification of such filing to the following counsel of record:

H. Benjamin Mullen, Esq.  
John A. Banahan, Esq.  
BRYAN, NELSON, SCHROEDER, CASTIGLIOLA & BANAHAN, PLLC  
Post Office Box 1529  
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Pascagoula, MS 39568-1529

Larry G. Canada, Esq.  
GALLOWAY, JOHNSON, TOMPKINS, BURR & SMITH  
701 Poydras Street, Suite 4040

New Orleans, LA 70139

/s/ Derek A. Wyatt  
DEREK A. WYATT (MSB. No. 7413)

Issued by the  
UNITED STATES DISTRICT COURT

CENTRAL

DISTRICT OF

ILLINOIS

Thomas C. & Pamela McIntosh

SUBPOENA IN A CIVIL CASE

V.

State Farm Fire and Casualty, et al

Case Number: 1:06cv1080 So. Dist. MISSISSIPPI

TO: STATE FARM BANK  
c/o Matt Poppe or Assigned Representative  
112 East Washington, 4th Floor  
Bloomington, IL 61701

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See Attached Exhibit "A" to Subpoena. To expedite delivery of the requested material, please fed-ex priority mail to be delivered on or before 9/10/2007 to the address below using the following fed-ex account number 245118821.

PLACE Derek A. Wyatt, NUTT & McALISTER, PLLC, 605 CRESCENT BLVD., SUITE 200 RIDGELAND, MS 39157	DATE AND TIME 9/10/2007 9:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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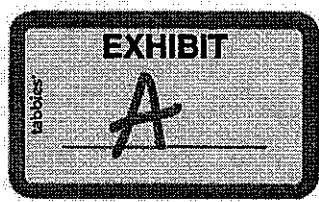
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Derek Wyatt - att. for Plaintiff</i>	DATE 8/27/2007
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
Derek A. Wyatt, NUTT & McALISTER, PLLC, 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157  
601-898-7302

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.



**PROOF OF SERVICE**

DATE	PLACE
<b>SERVED</b>	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

\_\_\_\_\_ DATE

\_\_\_\_\_ SIGNATURE OF SERVER

\_\_\_\_\_ ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

**EXHIBIT "A"**  
**TO SUBPOENA TO BE SERVED ON STATE FARM BANK**

1. Produce and permit inspection and copying of all documents or things, including electronically stored data, documents or things, relating or pertaining in any way to loans made at any time on or after September 1, 2005, to Forensic Analysis & Engineering Corporation and/or Robert K. Kochan and/or April Kochan or any affiliates thereof; and
2. Produce and permit inspection and copying of all documents or things, including electronically stored data, documents or things, relating or pertaining in any way to loans made at any time on or after September 1, 2005, to Forensic Analysis & Engineering Corporation and/or Robert K. Kochan and/or April Kochan or any affiliates thereof, and secured by a recreational vehicle; and
3. Produce and permit inspection and copying of all documents or things, including electronically stored data, documents or things, relating or pertaining in any way to loan number 08527000275; and,
4. Produce and permit inspection and copying of all documents or things, including electronically stored data, documents or things, relating or pertaining in any way to any loan(s) made by and between State Farm Bank or any affiliate thereof and Forensic Analysis & Engineering Corporation, Robert K. Kochan and/or April Kochan or any affiliates thereof, bearing inception date(s) previous or subsequent to loan number 08527000275.