

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

**THOMAS C. and PAMELA MCINTOSH**

**PLAINTIFFS**

**versus**

**Civil Action No. 1:06cv1080-LTS-RHW**

**STATE FARM FIRE & CASUALTY  
COMPANY AND FORENSIC ANALYSIS  
& ENGINEERING CORPORATION**

**DEFENDANTS**

**MEMORANDUM IN SUPPORT OF FORENSIC ANALYSIS  
& ENGINEERING CORP.'S MOTION TO QUASH  
SUBPOENA DUCES TECUM SERVED UPON STATE FARM BANK  
AND MOTION FOR PROTECTIVE ORDER**

**MAY IT PLEASE THE COURT:**

Defendant in the above captioned matter, Forensic Analysis & Engineering Corp. ("FAEC"), moves to quash the Subpoena Duces Tecum Plaintiffs' counsel intends to serve upon State Farm Bank [Doc. 393] and for a Protective Order regarding same.

**Introduction**

As a preliminary statement, FAEC finds it interesting that the issuing attorney of the subject Subpoena Duces Tecum to State Farm Bank is Derek Wyatt, an attorney who supposedly has not had involvement in the working up of this case.<sup>1</sup> Nonetheless, FAEC recognizes that Mr. Wyatt, as an attorney of record, may issue such a subpoena.

Plaintiffs' counsel intends to cause the issuance and service a Subpoena Duces Tecum in the United States District Court for the Central District of Illinois [Doc. 393]. The subpoena

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<sup>1</sup> On May 30, 2007, Plaintiffs' attorney Sidney A. Backstrom wrote to Judge Walker and all counsel, stating Derek Wyatt "has not had any involvement in the working up of this case." (See **Exhibit A**). On May 31, 2007, Derek A. Wyatt wrote to Judge Senter, "Further, I am quite certain that the numerous telephone conferences, motions, letters and other filings in this intense case have left both defense counsel and Magistrate Judge Walker's office with the *unmistakable impression that the McIntosh case is exclusively handled by Mr. Scruggs, and the assigned attorneys in his Oxford office.*" (See **Exhibit B**) (emphasis added).

targets State Farm Bank and its records, if any, relative to FAEC and/or Robert K. Kochan and/or Amy Kochan.<sup>2</sup> Importantly, neither Robert K. Kochan nor April Kochan is a defendant in this case. Specifically, the subpoena commands State Farm Bank to produce the following:

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 FAEC and/or Robert K. Kochan and/or April Kochan or any affiliates thereof;
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 FAEC and/or Robert K. Kochan and/or April Kochan or any affiliates thereof, and secured by a recreational vehicle;
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 [REDACTED];
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 FAEC, Robert K. Kochan and/or April Kochan or any affiliates thereof, bearing inception date(s) previous or subsequent to loan number [REDACTED].

[Doc. 393 with redaction of loan number].<sup>3</sup> None of the above are calculated to lead to the discovery of admissible evidence; instead, it appears Plaintiffs' counsel is on a fishing expedition for information unrelated to the *McIntosh* case.<sup>4</sup>

### Argument

State Farm Bank is not a party to this litigation; therefore, the subpoena at issue is governed by Rule 45 of the Federal Rules of Civil Procedure. The documents sought by the

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<sup>2</sup> See **Exhibit C**, Notice of Intent to Serve Subpoena, Doc. 393, Civil Action No. 1:06cv1080So.Dist.Mississippi.

<sup>3</sup> Upon information and belief, the Subpoena Duces Tecum at issue has not yet been issued or served. Upon issuance and service, FAEC intends to file a motion virtually identical to the one at bar in the United States District Court for the Central District of Illinois, seeking to quash the subpoena.

<sup>4</sup> It is FAEC's belief that Plaintiffs' counsel is seeking information relative to *Shows, et. al. v. State Farm, et. al.*, United States District Court for the Southern District of Mississippi, Southern Division, Civil Action No. 1:07-cv-00709-LTS-RHW, because of the allegations contained in the *Shows* Complaint.

subpoena go beyond an inquiry regarding Defendant, FAEC: the subpoena also seeks banking and loan information pertaining to Robert K. Kochan and April Kochan, neither of who is a defendant in this case. The court may quash or modify the subpoena if it “requires disclosure of privileged or other protected matter and no exception or waiver applies.” F.R.C.P. 45(c)(3)(A)(iii). The subpoena seeks not only information protected by the privacy rights of Mr. and Mrs. Kochan, but also seeks information irrelevant to the claims made against Defendant, FAEC, in this litigation.

“Ordinarily a party has no standing to quash a subpoena served on a third party, unless the party claims some personal right or privilege with regard to the documents sought.” *Chazin v. Lieberman*, 129 F.R.D. 97, 98 (S.D.N.Y.1990) (quoting 9 Wright & Miller, Federal Practice and Procedure § 2457 (1971)). “[I]n view of the policies underlying the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 et seq., and the Family Educational and Privacy Rights Act, 20 U.S.C. § 1232g, the Court will impose limitations on the subpoenas so as to restrict their scope to material that pertains to the acts specified in the complaint.” *Id.* (emphasis added).

It is anticipated that Plaintiffs wish to gain information on a loan made to Robert K. Kochan, on behalf of FAEC, to purchase a recreational vehicle (“RV”) for FAEC so that FAEC could establish a mobile office after Hurricane Katrina. This inference is gained by the loan number referenced in the subpoena directed at State Farm Bank. However, nowhere in Plaintiffs’ Complaint is there any allegation related to the RV or any financial relationship between State Farm Bank and the persons/entity identified in the subpoena. Plaintiffs’ Complaint contains two “Counts” against FAEC: 1) Fraud and 2) Aiding and Abetting Fraudulent Actions of Defendant, State Farm, Civil Conspiracy Engaged in by Both Defendants

to Deny Coverage. [Doc. 1, Comp. ¶¶ 73-90, Filed and Entered 10/23/2006]. There exists no basis to seek financial information from State Farm Bank in this case.

A more likely explanation is that Plaintiffs' counsel is attempting to engage in premature discovery in an unrelated case currently before this Honorable Court (i.e. *Shows, et. al. v. State Farm, et. al.*, United States District Court for the Southern District of Mississippi, Southern Division, Civil Action No. 1:07-cv-00709-LTS-RHW). As this Court is likely aware, the same group of attorneys in the case at bar represent the *Shows* Plaintiffs. In the *Shows* Complaint, Plaintiffs make a slew of baseless, farfetched, and ludicrous allegations surrounding FAEC's purchase of an RV for FAEC's Biloxi mobile office. For example, in the *Shows* Complaint, Plaintiffs aver:

88. Anticipating a lucrative relationship with STATE FARM, after the proposal was telephoned in, allegedly over interstate lines, KOCHAN purchased with borrowed funds a \$150,000 luxury RV which he later came to call FORENSIC's "mobile RV office." KOCHAN's investment in the RV, itself essential to the conduct of the inspection scheme, was expected to be recovered through STATE FARM's payment of a \$6,950.00 monthly fee for use of the RV.<sup>5</sup>

The allegations concerning the RV fail to pay homage to the fact that, post-Katrina, office space and living quarters were nearly non-existent, especially for out-of-state businesses. Regardless, it is apparent that Plaintiffs' counsel in this case is seeking information related to another case in which he is counsel of record. By seeking discovery that is clearly related to *Shows*, Plaintiffs' counsel is in violation of F.R.C.P. 26(d) ("[A] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)").

Setting aside Plaintiffs' ulterior motive, the bottom line is that the financial information sought is not relevant to the claims made in Plaintiffs' Complaint. "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party...

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<sup>5</sup> See **Exhibit D**, *Shows* Complaint, Doc. 1, Civil Action No. 1:07-cv-00709-LTS-RHW, pg 1-3, 19-20. Other references to the RV are found in throughout the *Shows* Complaint.

Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” F.R.C.P. 26(b)(1). In this case, the information is not only irrelevant, the information is not likely to lead to the discovery of admissible evidence. Further, Plaintiffs’ counsel has never sought written discovery relative to State Farm Bank, an avenue which may have proven less burdensome to State Farm Bank.

A severe injustice will ensue should Plaintiffs be permitted to commence this path of discovery. Being that there is no allegation in Plaintiffs’ Complaint relative to the RV or any financial relationship with State Farm Bank, FAEC would be prejudiced in its defense. Most notably, the expert designation deadline has far passed, and FAEC would be prohibited from seeking and designating an expert relative to the RV’s purchase, value, use, and subsequent sale. Even further, the discovery deadline is fast approaching, and with virtually no open dates on FAEC’s counsel’s calendar, FAEC would be unable conduct discovery on this issue in its defense. The issues in this case concerning FAEC deal with the engineering services rendered and an alleged conspiracy to defraud Plaintiffs from insurance benefits. Any relationship between any lending institution and FAEC and/or Robert K. Kochan and/or April Kochan is not relevant to this case or calculated to lead to the discovery of admissible evidence. Therefore, the subpoena at issue should be quashed and a protective order entered, prohibiting Plaintiffs’ counsel from pursuing the discovery sought.

### **Conclusion**

Considering the above, Defendant, FAEC (on behalf of itself and on behalf of Robert K. Kochan and April Kochan), respectfully requests this Honorable Court quash the Subpoena Duces Tecum issued to State Farm Bank and enter a Protective Order precluding the Plaintiffs from obtaining the discovery sought.

Respectfully submitted, this 10<sup>th</sup> day of September, 2007.

FORENSIC ANALYSIS &  
ENGINEERING CORP.

By: /s/ Kathryn Platt

LARRY G. CANADA (MSB#10480)  
KATHRYN BREARD PLATT (MSB#102141)  
GALLOWAY, JOHNSON, TOMPKINS,  
BURR & SMITH  
One Shell Square  
701 Poydras Street, Suite 4040  
New Orleans, Louisiana 70139  
Telephone: (504) 525-6802  
Facsimile: (504) 525-2456

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned attorney for Galloway, Johnson, Tompkins, Burr & Smith, has this day served a copy of the above and foregoing upon counsel of record and other interested persons via the Court's electronic notification system.

So certified, this 10<sup>th</sup> day of September, 2007.

/s/ Kathryn Platt

KATHRYN BREARD PLATT (MSB#102141)



LA Professional Association

130-A COURTHOUSE SQUARE POST OFFICE BOX 1136 OXFORD, MISSISSIPPI 38655  
TEL 662 281 1312 FAX 662 281 1312  
WWW.SCRUGGSLAWFIRM.COM

RICHARD F. SCRUGGS  
SIDNEY A. BACKSTROM (MS & LA)  
ZACH SCRUGGS  
DAVID SHELLON (MS & VA)

May 30, 2007

*Via Electronic Mail and Facsimile*

Honorable Robert H. Walker  
United States Magistrate  
Dan M. Russell, Jr. United States Courthouse  
2012 15<sup>th</sup> Street, Suite 672  
Gulfport, MS 39501

Honorable Richard McKenzie  
1301 West Pine Street  
P.O. Box 1403  
Hattiesburg, MS 39403

H. Benjamin Mullen, Esq.  
John A. Banahan, Esq.  
Bryan, Nelson, Schroeder, Castigliola & Banahan, PLLC  
P.O. Drawer 1529  
Pascagoula, MS 39568-1529

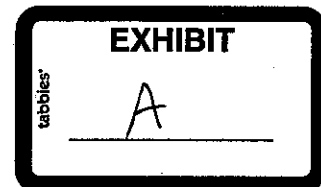
Larry G. Canada, Esq.  
Galloway, Johnson, Tompkins, Burr & Smith  
701 Poydras Street, Suite 4040  
New Orleans, LA 70139

Re: *McIntosh v. State Farm*  
Civil Action No.: 1:06-cv-1080-LTS-RHW

Dear Judge Walker, Judge McKenzie and Counsel:

This office learned for the first time yesterday that this matter was scheduled for mediation yesterday. Unfortunately, all of the AAA's correspondence on the scheduling of this matter went to Derek Wyatt, one of our co-counsel, who has not had any involvement in the working up of this case. Mari Corbett, of AAA, confirmed that for some reason AAA only

ESTABLISHED 1980



**Scruggs Law Firm**

May 30, 2007  
Page 2

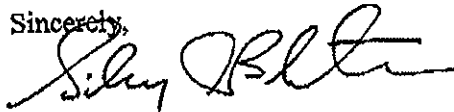
emails one lawyer for each side even when other lawyers are counsel of record and that is what occurred in this case.

Judge Walker, in order to avoid future issues like this, I believe it would be helpful if the Order referring cases to mediation would include an Order that AAA notify all counsel for the parties instead of their current practice of unilaterally designating a lawyer as the counsel to get notice for a party. This is the second time that AAA has noticed a lawyer on our side who has had no involvement in a particular case and who, as a result of having no involvement in that case, assumed that one of his co-counsel was handling the matter.

In any event, we will make ourselves available at everyone's convenience for a mediation of this case other than for the week of June 11<sup>th</sup>. We have a number of cases to be mediated during that entire week before Judge Walker.

Notably also though, we filed a motion for leave to add E.A. Renfroe & Company as a party to this litigation on March 22, 2007 and that motion is still pending. In our view, it will be difficult to mediate this case without all parties before the Court and without knowing whether or not additional parties will be added. So as to ensure that additional time is not wasted at a second effort to mediate the case in the near future, we recommend postponing this mediation until the Court has ruled on the pending motion. We ask that counsel provide their thoughts on this as soon as possible so that we can determine whether a motion on the matter is appropriate.

Sincerely,



Sidney A. Backstrom

SAB/lh

cc: Ron Cochran



# SCRUGGS KATRINA GROUP

*Attorneys at Law, Incorporated Legal Professionals*

Scruggs Law Firm, P.A.  
Nutt & McWhiter, P.L.L.C.

Barrett Law Office, P.A.  
Lovelace Law Firm, P.A.

Thursday, May 31, 2007

Senior Judge L.T. Senter  
2012 15<sup>th</sup> Street  
Suite 614  
Gulfport, MS 39501

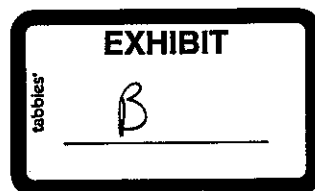
**Re: Order entered May 30, 2007  
McIntosh v. State Farm et al  
Case 1:06-cv-01080-LTS-RHW**

Dear Judge Senter:

Please find enclosed for reference a copy of the Court's Order dated May 30, 2007, awarding sanctions of \$1,500.00 against me personally in the aforementioned case.

Meaning no disrespect to the Court, I am at a complete loss to understand the Order or the finding that there is an absence of good cause under these circumstances. Naturally being very distressed over this matter, I made an effort to find out how and why AAA sent notice of mediation to me, and me alone, especially with so many other attorneys in the case. Further, I am quite certain that the numerous telephone conferences, motions, letters and other filings in this intense case have left both defense counsel and Magistrate Judge Walker's office with the unmistakable impression that the McIntosh case is exclusively handled by Mr. Scruggs, and the assigned attorneys in his Oxford office.

Feeling a duty to inquire, if for no other reason than to prevent others from being caught-up in this, I contacted AAA to find out what procedures have been furnished to the Court by AAA, formally or informally, concerning notification of counsel. So far, after two phone calls and several emails, I have received nothing. Our office is requesting that AAA provide a hard copy of the letter purportedly sent to my office, scheduling the McIntosh mediation. I did learn in a telephone



Senior Judge L.T. Senter  
May 31, 2007  
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conversation this morning that the "case manager" for AAA, Mari Corbett, advised she randomly picks the first attorney name on the ECF system, and notices only that person. Mari was candid enough to admit she had never handled court mediation assignments for AAA before.

In accordance with Your Honor's Order, I hereby tender payment to the parties listed in the Order, as follows:

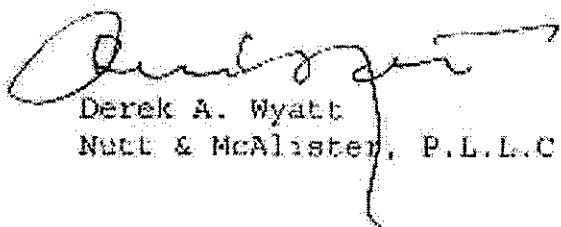
1. American Arbitration Order Association  
Central Case Management Center  
13455 Noel Road, Suite 1750  
Dallas, Texas 75240-6620  
Attention: Lesley Barton  
\$200.00
2. Honorable Richard W. McKenzie  
P.O. Box 1403  
Hattiesburg, Mississippi 39403  
\$400.00
3. Harry Benjamin Mullen, Esq.  
Bryan, Nelson, Schroeder, Castigliola & Banahan  
P.O. Drawer 1529  
Pascagoula, Mississippi 39568-1529  
\$400.00
4. Larry G. Canada, Esq.  
Galloway, Johnson, Tompkins, Burr & Smith  
701 Poydras Street, Suite 4040  
New Orleans, Louisiana 70139  
\$500.00

Senior Judge L.T. Senter  
May 31, 2007  
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By this letter, I am notifying the Court of my compliance with the Order. AAA is hereby noticed to direct all future mediation notices, scheduling matters, etc. to Zach Scruggs.

Sincerely yours,

SCRUGGS KATRINA GROUP



Derek A. Wyatt  
Nutt & McAlister, P.L.L.C.

DAN

Enclosure

cc: Magistrate Judge Robert H. Walker  
American Arbitration Order Association  
Attention: Lesley Barton  
Attention: General Counsel  
Honorable Richard W. McKenzie  
Harry Benjamin Mullen, Esq.  
Larry G. Canada, Esq.  
Co-counsel (via email only)

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.

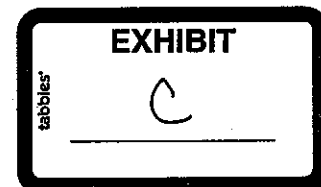
THOMAS C. and PAMELA MCINTOSH, PLAINTIFFS

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

Of Counsel:

Mary E. McAlister, Esq.  
Derek A. Wyatt, Esq.  
NUTT & MCALISTER  
605 Crescent Blvd.  
Suite 200  
Ridgeland, MS 39157  
Phone: (601) 898-7302

Richard F. Scruggs, Esq.  
Sidney A. Backstrom, Esq.  
David Zachary Scruggs, Esq.



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P.O. Box 1136  
120-A Courthouse Square  
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Don Barrett, Esq.  
Marshall Smith, Esq.  
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P.O. Box 987  
Lexington, MS 39095  
Phone: (662) 834-2376

Dewitt M. Lovelace, Esq.  
LOVELACE LAW FIRM, P.A.  
36474 Emerald Coast Parkway  
Suite 4202  
Destin, FL 32541  
(850) 837-6020

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  
1103 Jackson Avenue  
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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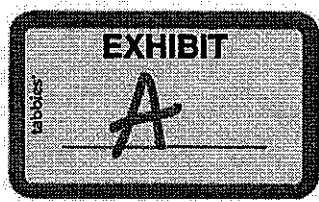
Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. 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
------------------------------------------------------------------------------------------------------------------------------------	-------------------

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)

1 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).

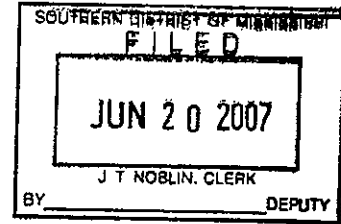


**EXHIBIT "A"**  
**TO SUBPOENA TO BE SERVED ON STATE FARM BANK**

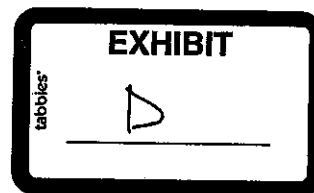
1. Produce and permit inspection and copying of all documents or things, including electronically stored data, documents or things, relating or pertaining in any way to loans made at any time on or after September 1, 2005, to Forensic Analysis & Engineering Corporation and/or Robert K. Kochan and/or 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.

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

GLEENDA SHOWS; )  
)  
THOMAS L. ARNOLD and )  
ANN C. ARNOLD; )  
)  
ESTATE of ALFRED PEPPERMAN, )  
Deceased, DAVID PEPPERMAN, )  
Exectutor; )  
)  
WALTON JONES and PENNY JONES; )  
)  
ELLEN SUMMERS and )  
STEPHEN F. SUMMERS; )  
)  
STEPHEN P. THOMPSON and )  
PATRICIA B. THOMPSON; )  
)  
WAYNE HARBOUR; )  
)  
SHERROD WILLETTE and )  
MARY WILLETTE; )  
)  
ROBERT C. GIVENS; )  
)  
TED THOMAS and DONNA THOMAS; )  
)  
ALAN LIPSKI; )  
)  
SANDRA SIMPSON; )  
)  
CHARLES J. LINKEY and )  
JOYCE A. LINKEY; )  
)  
MICHAEL HEITZMANN and )  
PATRICIA HEITZMANN; )  
)  
DALE M. HILL SR.; )  
)  
PAUL GLOYER and )  
CONSTANCE GLOYER; )  
)  
RONALD E. NUGENT and )  
BARBARA P. NUGENT; )  
)  
CHET CARTER; )  
)  
GINGER THACKREY and )  
DEBRA JOINER; )



CIVIL ACTION NO. 1:07cv0709LTS-RHW  
JURY TRIAL DEMANDED



**JEFFREY PICKICH;** )

**CRAIG FARON TROUB and** )  
**MARION TROUB;** )

**Plaintiffs** )

**-vs-** )

**STATE FARM MUTUAL** )  
**AUTOMOBILE INSURANCE** )  
**COMPANY, an Illinois** )  
**corporation;** )

**STATE FARM FIRE AND** )  
**CASUALTY COMPANY,** )  
**an Illinois corporation;** )

**FORENSIC ANALYSIS &** )  
**ENGINEERING CORPORATION,** )  
**a Florida corporation;** )

**ROBERT K. KOCHAN, individually,** )  
**as agent of, and d/b/a FORENSIC** )  
**ANALYSIS & ENGINEERING** )  
**CORPORATION;** )

**E. A. RENFROE & COMPANY, INC.,** )  
**a Georgia corporation;** )

**GENE RENFROE and JANA RENFROE,** )  
**individually, as agents of** )  
**and d/b/a E. A. RENFROE** )  
**& COMPANY, INC.;** )

**JOHN AND JANE DOES 1-25** )

**Defendants**

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**COMPLAINT FOR VIOLATION OF  
RACKETEER INFLUENCED CORRUPT  
ORGANIZATION ACT ("RICO") AND FOR OTHER RELIEF**

COME NOW, the Plaintiffs, GLENDA SHOWS; THOMAS L. ARNOLD and ANN C. ARNOLD; ESTATE of ALFRED PEPPERMAN Deceased, DAVID PEPPERMAN, Executor; WALTON JONES and PENNY JONES; ELLEN SUMMERS and STEPHEN F. SUMMERS; STEPHEN P. THOMPSON and PATRICIA B. THOMPSON; WAYNE HARBOUR; SHERROD WILLETTE and MARY WILLETTE;

ROBERT C. GIVENS; LUGENE STENUM and PAMELA STENUM; TED THOMAS and DONNA THOMAS; ALAN LIPSKI; SANDRA SIMPSON; CHARLES J. LINKEY and JOYCE A. LINKEY; MICHAEL HEITZMANN and PATRICIA HEITZMANN; DALE M. HILL, SR.; PAUL GLOYER and CONSTANCE GLOYER; RONALD E. NUGENT and BARBARA P. NUGENT; CHET CARTER; GINGER THACKERY and DEBRA JOINER; JEFFREY PICKICH; and CRAIG FARON TROUB and MARION TROUB; and commence this action against the Defendants STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; STATE FARM FIRE AND CASUALTY COMPANY; FORENSIC ANALYSIS & ENGINEERING CORPORATION; ROBERT K. KOCHAN, individually, as agent of and d/b/a FORENSIC ANALYSIS & ENGINEERING CORPORATION; E.A. RENFROE & COMPANY, INC.; GENE and JANA RENFROE, individually, as agents of and d/b/a E.A. RENFROE & COMPANY, INC.; and not yet identified JOHN and JANE DOES 1-25; and bring the following causes of action to wit:

**DEMAND FOR JURY TRIAL**

Plaintiffs, by and through their attorneys, bring this action and demand trial by jury on all counts.

**I.  
PARTIES  
PLAINTIFFS**

1. Plaintiff GLENDA SHOWS is a citizen of the state of Mississippi who currently resides, and at the time of Hurricane Katrina, resided in Jackson County, Mississippi. At all times relevant to this action, Plaintiff was a named insured under STATE FARM homeowners policy number 24-00-3138-5, covering her residence at 4010 S. Shore Drive, Pascagoula, Mississippi.

2. Plaintiffs THOMAS L. ARNOLD and ANN C. ARNOLD are citizens of the state of Arkansas who, and at the time of Hurricane Katrina, resided in Arkansas. At all times relevant to this action, Plaintiffs were named insureds under STATE FARM homeowners policy number 24-CX-4572-4, covering a residence at 135 Dogwood Street, Waveland, Mississippi.

3. Plaintiff the ESTATE of ALFRED PEPPERMAN Deceased, DAVID PEPPERMAN, Executor, is for purposes of this action deemed to be a citizen of the state of Mississippi. At all times relevant to this action, Plaintiff's decedent was a named insured under STATE FARM homeowners policy number 24-00-3463-3, covering his residence at 104 Grosvenor Place, Waveland, Mississippi.

4. Plaintiffs WALTON JONES and PENNY JONES are citizens of the state of Louisiana who, at

84. On or about September 10, 2005, Stephan Hinkle began drafting the "Wind Water Claim Handling Protocol" (the "Hinkle Protocol") which STATE FARM ultimately utilized in denying or underpaying thousands of Katrina damage claims.

85. On September 13, 2005, STATE FARM distributed the Hinkle Protocol to its claims handlers, including RENFROE employees, working Katrina claims on the Mississippi Gulf Coast. STATE FARM applied the Hinkle Protocol to Plaintiffs' and thousands of other homeowners' Katrina claims. The Hinkle Protocol directed claims handlers to deny Katrina claims as follows:

**Where wind acts concurrently with flooding to cause damage to the insured property, coverage only exists under flood coverage, if available.**

The Hinkle Protocol re-wrote coverage conditions in Plaintiffs' FP-7955 policies, and, in practice and effect, stripped the policies of the all-risks coverage applicable to wind damage from a hurricane.

86. STATE FARM appointed Alexis "Lecky" King, Dave Randel, Mark Drain, Mark Wilcox, David Haddock and a team of other claims personnel, to act as the Katrina catastrophe claims team. Lecky King, STATE FARM's "team manager," was given authority to hire and fire engineers, to procure property inspections, and generally, to handle all matters related to Katrina claims handling. As in the Oklahoma scheme, Lecky King hired and associated the RENFROE COMPANY to act as adjusters for many of the insured Plaintiffs. As alleged with particularity below, inspection reports relating to Plaintiffs' properties were addressed and forwarded by U.S. Mail to RENFROE COMPANY and/or its adjuster employees (or other DOE Defendants) who, along with STATE FARM, were at all times relevant to this action, FORENSIC's "clients."

#### **B. INITIAL CONTACT WITH FORENSIC**

87. On or before September 26, 2005, STATE FARM's employee Mark Wilcox ("Wilcox"), on information and belief using interstate telephone lines, called KOCHAN and proposed that STATE FARM hire FORENSIC to furnish engineers, inspect properties and prepare inspection reports for STATE FARM's use in processing Hurricane Katrina damage claims in Mississippi. As alleged with particularity below, the purpose of the call was to lay the groundwork for the scheme or artifice to defraud Plaintiffs.

88. Anticipating a lucrative relationship with STATE FARM, after the proposal was telephoned in, allegedly over interstate lines, KOCHAN purchased with borrowed funds a \$150,000.00 luxury RV which he later came to call FORENSIC's "mobile RV office."<sup>9</sup> KOCHAN's investment in the RV, itself essential to the

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<sup>9</sup> Exh. 5, September 26, 2005, confirmation letter, signed by Robert K, Kochan, President.

conduct of the inspection scheme, was expected to be recovered through STATE FARM's payment of a \$6,950.00 monthly fee for use of the RV.

89. On or about September 26, 2005, the proposal made in the Wilcox - KOCHAN telephone conversation was accepted and confirmed in a letter written and transmitted by KOCHAN, on information and belief, via U.S. Mail or by interstate telefax line, to Wilcox and STATE FARM.<sup>10</sup> The purpose of the confirmation letter was to secure the financing for the scheme or artifice to defraud Plaintiffs, as alleged with particularity below.

90. Prior to KOCHAN's September 26, 2005, confirmation letter, Wilcox and STATE FARM sent to FORENSIC's Raleigh, North Carolina office, fourteen (14) inspection assignments involving Katrina damaged properties insured by STATE FARM. On information and belief, the fourteen (14) separate inspection assignments were transmitted to FORENSIC and KOCHAN by U.S. Mail and/or use of interstate telefax lines and/or over the internet.<sup>11</sup> The purpose of the transmission was to instigate the inspection scheme ultimately aimed at divesting the Plaintiffs' and other insureds' coverage benefits.

91. As alleged with particularity below, the September 26, 2005, letter transmitted by KOCHAN confirmed the rudiments of the scheme or artifice (the "FORENSIC inspection scheme") to defraud Plaintiffs out of coverage benefits owed under STATE FARM's policies.

### C. THE FORENSIC INSPECTION SCHEME

92. KOCHAN's confirmation letter stated that FORENSIC "has its own fully equipped and functioning mobile office and living quarters RV set up for these type of emergency situations."<sup>12</sup>

93. Based on his telephone conversation with Wilcox, KOCHAN anticipated that FORENSIC's business dealings with STATE FARM would easily generate enough income to pay for the \$150,000.00 luxury RV he had purchased, plus substantial profit from FORENSIC's "proportionate share" of the 10,000 anticipated

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<sup>10</sup> Exh. 5, September 26, 2005, confirmation letter, signed by Robert K. Kochan, President.

<sup>11</sup> *Id.*

<sup>12</sup> It should be noted, at the time Wilcox initially called, FORENSIC had no such "mobile office." KOCHAN purchased the RV immediately after Wilcox's initial telephone call. The staff of FORENSIC consisted of a handful of employees, counting KOCHAN. FORENSIC occupied a small office in Raleigh, NC, and largely obtained its business through its website, which advertised expertise in "failure analysis." Defendant KOCHAN has never attained professional licensure as an engineer in any U.S. jurisdiction, and essentially brokers consulting engineers when prospective clients such as STATE FARM hire FORENSIC.