

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

**THOMAS C. McINTOSH and
PAMELA McINTOSH**

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:06cv1080-LTS-RHW

**STATE FARM FIRE AND CASUALTY
INSURANCE COMPANY, *et al.***

DEFENDANTS

ORDER

Before the Court is [703], State Farm's motion to compel compliance with the Court's Order [563] of October 1, 2007. The order in question required Kerri Rigsby and Cori Rigsby to produce documents requested by State Farm, to submit a privilege log for any documents withheld under claim of privilege, and also to produce to the Court for *in camera* inspection any documents withheld under claim of privilege. State Farm now moves the Court to require the Rigsbys to produce the documents referenced in their privilege log as Numbers 5 and 6, Bates numbered RIGSBY 2901 - RIGSBY3108 and RIGSBY3109 - RIGSBY 3294. The Court having examined the documents submitted for *in camera* review, finds as follows:

Number 5 on the Rigsbys' privilege log is described as, "An evidentiary disclosure consisting of emails and other documents concerning fraud by State Farm in the aftermath of Hurricane Katrina submitted to United States on or about April 24, 2006 (RIGSBY2901-RIGSBY3108)." The privileges asserted by the Rigsbys for withholding these documents are, "*qui tam*, attorney-client, work product, joint interest/joint prosecution privilege." The Court holds, at the outset, that the Rigsbys' identification of all the documents contained in No. 5 on

their privilege as a *qui tam* disclosure was unnecessary, did not sufficiently identify the documents as required by the Rules, and does not shield the documents from disclosure. That said, the Court will address the particular documents included in No. 5.

Pages 2901 - 2938 are purportedly the “relator’s evidentiary disclosure” in the Rigsbys’ *qui tam* case, but they were submitted to the Court in blank and/or entirely redacted with the exception of the signature page and certificate of service on pages 2937-2938. The Court therefore can find no privilege to excuse production of the documents and orders the Rigsbys to produce them.

Pages 2939 - 2999¹ are State Farm’s “Engineers Roster - CAT PL” bearing date 4/20/2006, and time 1:35 p.m., and marked “State Farm Insurance Confidential Proprietary Information.” The Court finds that the Rigsbys have no privilege in these documents. The Rigsbys are ordered to produce these documents. Pages 3000 - 3030 are the Haag Engineering Co. *Hurricane Katrina Storm Damage Survey*, ©2005, which by no stretch of the imagination could be deemed the Rigsbys’ or their attorneys’ work product, nor is it protected from discovery by any of the other privileges claimed. The Rigsbys are ordered to produce these documents.

Pages 3031 - 3065 appear to be a State Farm adjuster’s work-up of the *Hurricane Katrina* claim of Craig Balius.² No claim of attorney-client, work product, or “joint interest/prosecution” privilege applies to these documents, and the Rigsbys are ordered to produce them.

Pages 3066 - 3097 are internal State Farm catastrophe team emails, and an attached WeatherData report (pages 3077 - 3097) dated August 2005, and pages 3098 - 3104 are

¹Pages 2984-2999 actually contain no information.

²Mr. Balius is not represented by the Plaintiffs’ attorneys in this case, nor has any evidence been offered to show any relationship between him and anyone involved in the McIntosh case.

additional internal emails. The Court finds the Rigsbys have no legally cognizable privilege with respect to these documents, and orders them to produce same.

Page 3105-3108 are redacted pages of “relator’s declaration(s)” of Kerri and Cori Rigsby in their *qui tam* case, which contain no information for review by the Court. The Court will not require the Rigsbys to produce unredacted copies of these documents, as the information subject to discovery with respect to this matter is available as public record from the docket in Civil Action No. 1:06cv433-LTS-RHW.

With respect to No. 6 on the Rigsbys’ privilege log, RIGSBY3109 - RIGSBY 3294, withheld because they “might be argued to be subject to Judge Acker’s injunction and protective order,” the Court finds as follows:

Pages 3109-3112, titled “Gulfport Catastrophe Office” and bearing the notation “revised 10/18/2005,” consist of names, State Farm identification numbers, etc., of team managers and members, with phone numbers and “onsite roles” identified. Page 3113 is a similar document titled “Biloxi Roster.” The Court orders the Rigsbys to produce these documents.

Pages 3114, and 3115 - 3118 are, respectively, a blank FEMA flood form and FEMA informational literature which the Rigsbys are ordered to produce. Pages 3119-3127 are instructions regarding estimating damages in adjusting claims, and forms for providing a summary of same. Some of these pages are identified as State Farm documents, *e.g.*, page 3123 and pages 3124 - 3127. The Rigsbys are ordered to produce these documents.

Pages 3128-3129 are titled “Steps to scoping the flood loss– stick built,” and pages 3130 - 3199 are flood claim worksheets, instructions, and forms for estimating damages.³ Pages 3200 -

³Redactions appear on some of the pages submitted for *in camera* inspection, *e.g.*, pages 3131 - 3135.

3202, titled "ICC Workflow," are more instructions on adjusting flood claims. The Court orders the Rigsbys to produce these documents.

Pages 3203 - 3240 are two identical copies of a 19-page document titled "State Farm Insurance Catastrophe Personnel Tracking System Office Roster by Team Report," bearing the date 9/14/2005 and time 11:20 AM CDT. Each of these pages is marked, "For Internal use only. Nothing contained in this shall be disclosed out side State Farm unless proper authorization is obtained." The Court orders the Rigsbys to produce these documents.

Page 3241 is a black page with only the handprinted word "Flood" discernible. Pages 3242 - 3245 appear to be redacted pages from flood claims files. Page 3246 is a typewritten document titled "Closing Flood Files – Training Guide," which is marked, "For Internal State Farm Use Only." Page 3247 gives the flood code for particular water depths. Pages 3248 - 3252 are blank payment authorization forms for flood loss and increased cost of compliance. Pages 3253 - 3278 are all blank forms which appear to be worksheets for use in adjusting claims. Pages 3279-3280 are statement of loss forms, and Page 3281 is a form letter for transmittal of NFIP information increased cost of compliance information. Page 3282 is a blank flood claim worksheet, and Pages 3283 - 3288 are two identical copies of a 3-page document titled "Flood Authorization Coding Strip." Pages 3289-3294 are a blank 12-page XactTotal Home Valuation Questionnaire. The Court orders the Rigsbys to produce all these documents. It is therefore,

ORDERED that the motion to compel is granted in part and denied in part. Within seven (7) calendar days (including weekends) of the date of this order, Kerri Rigsby and Cori Rigsby

shall produce to State Farm all the documents included in Nos. 5 and 6 on their privilege log, with the exception of pages 3105-3108.

SO ORDERED, this the 14th day of December, 2007.

/s/ Robert H. Walker

ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE